ETHICS IN GOVERNMENT: OFFICE OF GOVERNMENT ETHICS

(Part II—Appendix)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

SEPTEMBER 29 AND 30, 1986

Serial No. 99-76

Printed for the use of the Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE

90-785 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H621-14

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

WILLIAM D. FORD, Michigan, *Chairman*

WILLIAM (BILL) CLAY, Missouri
PATRICIA SCHROEDER, Colorado
STEPHEN J. SOLARZ, New York
ROBERT GARCIA, New York
MICKEY LELAND, Texas
GUS YATRON, Pennsylvania
MARY ROSE OAKAR, Ohio
GERRY SIKORSKI, Minnesota
FRANK McCLOSKEY, Indiana
GARY L. ACKERMAN, New York
MERVYN M. DYMALLY, California
RON DE LUGO, Virgin Islands
MORRIS K. UDALL, Arizona

GENE TAYLOR, Missouri
BENJAMIN A. GILMAN, New York
CHARLES PASHAYAN, JR., California
FRANK HORTON, New York
JOHN T. MYERS, Indiana
DON YOUNG, Alaska
JAMES V. HANSEN, Utah
DAN BURTON, Indiana

TOM DEYULIA, *Staff Director*
ROBERT E. LOCKHART, *General Counsel*
PATRICIA F. RISSLER, *Deputy Staff Director and Chief Clerk*
JOSEPH A. FISHER, *Minority Staff Director*

SUBCOMMITTEE ON INVESTIGATIONS

GERRY SIKORSKI, Minnesota, *Chairman*

WILLIAM D. FORD, Michigan
GUS YATRON, Pennsylvania

GENE TAYLOR, Missouri
BENJAMIN A. GILMAN, New York

DENNIS MCGRANN, *Subcommittee Staff Director*

CONTENTS

(PART I)

SEPTEMBER 29, 1986

	Page
Statement of:	
Fred Wertheimer, president, Common Cause, accompanied by Michal Freedman, attorney, Common Cause	3
Stanley Brand, partner, Brand and Lowell (former General Counsel to the Clerk of the House of Representatives)	44
David H. Martin, Director, Office of Government Ethics, accompanied by Donald Campbell, Chief Counsel, OGE, and Jack Covaleski, Chief, Monitoring Compliance Section, OGE	63

SEPTEMBER 30, 1986

Statement of:	
Hon. Don Sundquist, a Representative in Congress from the State of Tennessee	122
Herbert S. Sanger, Jr., former Chief Counsel and designated agency ethics official, Tennessee Valley Authority	125
William E. Mason, former Assistant General Counsel, Tennessee Valley Authority	223
Gerald H. Yamada, Deputy General Counsel, designated agency ethics official, U.S. Environmental Protection Agency	313
Gabriele J. Paone, deputy agency ethics and audit coordination official, U.S. Department of the Interior	315
Additional material:	
Letter from C.H. Dean, Jr., Chairman, Tennessee Valley Authority Board of Directors	98
Memoranda from the American Law Division of the Congressional Research Service, dated September 26, 1986, and August 27, 1986, respectively	99
Memorandum dated February 13, 1986, submitted by Herbert S. Sanger, Jr., to "General Counsel's Files, etc."	231
Memorandum dated May 5, 1986, from Herbert S. Sanger, Jr., to C.H. Dean, Jr., Chairman, Board of Directors, TVA	256
Various letters of correspondence with the Office of Government Ethics	297

(PART II)

Appendix: Chronology of events involving some of TVA's service contract arrangements for its nuclear power plant	1

ETHICS IN GOVERNMENT: OFFICE OF GOVERNMENT ETHICS
(Part II—Appendix)

TUESDAY, SEPTEMBER 30, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

[The appendix follows:]

CHRONOLOGY OF EVENTS INVOLVING SOME OF TVA'S
SERVICE CONTRACT ARRANGEMENTS FOR ITS
NUCLEAR POWER PLANTS

5/85 (approx.) W. H. Thompson asked W. E. Mason to discuss possible options TVA had to obtain management talent for the nuclear power program. After discussing it with H. S. Sanger, Mason discussed with Thompson alternatives, including arranging for the loan of managers from other nuclear utilities or entities. (M-99 to M-101)

10/18/85 At a Board meeting, the Board announced its intention to hire a nuclear czar to advise the Board on all nuclear power matters. The Board also approved the plan to establish an Office of Inspector General. The approved plan stated "in furtherance of the Board's existing policy, the Inspector General shall report to the appropriate law enforcement agency any information developed which the Inspector General concludes may evidence a violation of the law." (October 18, 1985 Board Minute Entry 1357-2 and Exhibit 10-18-85a)

11/8/85 H. G. Parris notified nuclear power managers, copy to Sanger, that TVA had contracted with Stone & Webster Engineering Corporation (SWEC) to perform an assessment of selected nuclear power program areas on November 12-22. The SWEC team was identified as including Ed Siskin, Steven White, Assistant to SWEC's Chairman of the Board, and Bill Wegner, consultant. (I-3)

11/12/85 W. E. Mason approved for the Office of the General Counsel (OGC) a proposed personal services contract with SWEC for an assessment of selected nuclear power program areas. (I-1)

12/23/85 Sanger attended a meeting with C. H. Dean, R. M. Freeman, J. B. Waters, W. F. Willis, and Parris at the Sequoyah Nuclear Plant at which White and Wegner proposed that TVA contract for the services of White to serve as nuclear power manager for two years. Sanger suggested that TVA contract with White or some corporation White might form and White seemed to initially accept that. Wegner, however, said that TVA must contract with SWEC for White's services. The proposal was that SWEC would also make available the services of 6-8 others to assist White. The 6-8 others would include Wegner and others from his consulting firm, Basic Energy Technology Associates (BETA). White explained that he had been advised to contract with TVA for his services through SWEC to avoid any unintentional fraud involving receipt of his military pension under the dual compensation law. The law provides generally for a retired military officer's military pension to offset any salary paid to the officer as an appointed or elected employee of a Federal agency. The Board asked Sanger to draft a loan agreement with SWEC for the proposed services along the lines of the loan agreement with Management Analysis Company (MAC) for the services of

William C. Bibb as Site Director at Browns Ferry Nuclear Plant. Sanger was to provide the draft to R. Orem, counsel for SWEC. (M-106; note, January 3, 1986)

12/24/85 Sanger assigned Mason to prepare a draft loan contract with SWEC for White's services and those of 6-8 others and provide it to SWEC and Willis. Sanger then left the office late in the evening after discussing the matter with Director Freeman. (note, January 3, 1986)

12/26/85 Mason completed the draft loan agreement and provided it to SWEC and Willis. (A-31; M-102; note, January 3, 1986)

12/26 or 27/85 Willis told Mason and Sanger (who was away from the office) by phone that: although Mason's draft of the agreement showed that SWEC was providing White and six others as loaned employees, the arrangement was that SWEC was providing only White as a loaned employee--the others were to be advisors or contractors to assist White and would not function in loaned employee capacities. He said White and SWEC were going to be in SWEC's Washington, D.C. offices on December 30, 1985 to work out the details of the contracts. Willis told Sanger OGC should represent TVA at the meeting. Mason was assigned to attend. (note, January 3, 1986)

12/30/85 Mason met with White, Wegner, Siskin, Mel Greer, Willis Matson, S. Bjorkman, SWEC counsel, and others in SWEC's Washington offices. Sanger was away from the office as previously scheduled.

1. Mason met first with Wegner. Wegner said there were going to be three agreements: the loan agreement with SWEC for White's and others' services; a memorandum of understanding (MOU) between White and the TVA Board establishing White's duties, authorities, responsibilities, and protocols; and a personal services contract for SWEC to provide engineering and support services. Mason told Wegner the MOU sounded like what TVA would call a job description and that while the Board approved certain contracts, it did not enter into them. Wegner said the MOU was much more extensive than a job description. Mason also told Wegner that the personal services contract was not part of the proposal that he had been sent to Washington to negotiate and that any necessary personal services contract could be considered in the usual TVA fashion.

   The documents were not drafted. Mason was to return after lunch.

2. Mason called Willis and reported. Willis subsequently told Mason he had spoken to the Board members and they agreed that a MOU would be okay, but that any personal service contract with SWEC would be considered in the usual TVA process after the arrangements with White were concluded.

   Although no particular procedure is required by the TVA Act, TVA Code III PERSONAL SERVICES, approved by the TVA Board May 2, 1980, states in the Delegations section: "[o]ffices and divisions . . . in conjunction with the Office of the General Counsel and the Division of Personnel, negotiate and evaluate contracts involving amounts of $500,000 or more under procedures . . . which ensure the maximum degree of competition in the selection." TVA Personnel Manual Instruction PERSONAL SERVICES, Contracts/PM § 7, provides (at 3) "[i]f the contract is for $10,000 or more, attach documentation that . . . work statement has been sent . . . to at least three prospective organizations."

3. Wegner then returned with White and introduced White to Mason. Wegner and White expressed the urgency of concluding the arrangements that day and asked if Mason had authority to agree for TVA. Mason said he was sent to discuss the arrangements, but that he could call Willis at any time and that Willis was talking to the Board members. Wegner and White expressed the urgency to conclude and announce the arrangements for White's services in light of the scheduled January 9, 1986 meeting of the Board with the NRC Commissioners. White gave Mason several copies of his resume' (M-103, M-104), showing that White was an Assistant to the Chairman of the Board of SWEC.

4. After lunch, Wegner gave Mason the draft MOU. After reviewing it, Mason spoke to Willis and then to Wegner and White. There was considerable discussion, including White's agreement to the provision in the December 26 draft loan agreement that he would be subject to TVA's employee rules on conduct, conflicts, and ethics and his explicit understanding that he would file a Financial Disclosure Report under the Ethics in Government Act. Finally, Willis suggested to Mason that in light of the lack of other progress, Mason and the SWEC principals come to Knoxville the next day to further negotiate. White told Mason he saw no point in going to Knoxville, that the agreements were satisfactory as drafted, reflected his understanding with the Board, needed to be announced, and that Mason should take the documents to

Knoxville for Willis and the Board to review them. White told Mason he was tired of these negotiations and he was going back to his farm.

5. It was by then the end of the day. Mason was provided SWEC's drafts of the personal services contract and the loan agreement. Mason told Siskin that the personal services contract was not part of the arrangement that was being negotiated and that TVA would consider needed engineering personal service contracts in its usual process. Siskin explained the necessity for White to have services he could call on when he went into the "hostile environment" of TVA and that all SWEC's experience with these nuclear "SWAT Team" and "rescue efforts" was that a loyal cadre supportive of White was essential to a quick start on fixing the problems. Mason objected that Siskin's characterizations would be unhelpful to White going into TVA and having to work with permanent TVA employees. Other SWEC representatives told Mason that the timing of the approval of these contracts was essential so that SWEC's Washington people could help by explaining the contracts on the Hill and to NRC. Mason said that the TVA Board handled its congressional relations through TVA's Washington Office, but that NRC relations would be under White.

During the discussions on December 30, Mason spoke to Sanger several times by phone for direction on the various items being discussed. (note, January 3, 1986)

12/31/85 Mason reported to Willis. Later Willis told Mason he had informed the Board. Willis called White and arranged for him to meet Willis in Knoxville on January 2 to conclude the arrangements.

Later in the day, Freeman told Mason that the SWEC draft MOU should have a recital stating the purpose of the arrangements as being to enhance TVA's nuclear management and return TVA's nuclear plants safely to operation. (note, January 3, 1986)

5/3/84

Willis and Mason met with White, Wegner, Matson, and George Edgar and Kevin Gallen, White's counsel, and others in Knoxville. Mason provided copies of the draft MOU as discussed in Washington, modified to include Freeman's suggestions for a recital on page 1. White read the first page with the additional recital and said that it had not been discussed with him, was not true, and was an unacceptable change, that he was tired of constantly discussing this contract that already was satisfactory, and walked out of the room stating his intent to return to his farm. Mason explained to White privately the origin and Freeman's intent of the proposed recital. The Board members were summoned, White returned to the meeting room, and the discussions continued. Freeman told White that he thought it essential that the agreement clearly establish the parties' agreed-upon purpose for the arrangements to both safely return the plants to operation and to enhance TVA's management capability so that TVA could resume managing with its own forces at the end of the two-year term.

In the ensuing discussion, it was discussed in Mason's presence for the first time (and no one had previously told Sanger) that White planned as part of his Manager of Nuclear Power responsibilities to order services for TVA from SWEC and through SWEC from STEMAR, a company principally owned by him and of which he was president. Mason said this could not be done. When asked by Edgar "Why not," Mason replied that the Federal criminal conflict of interest statute (18 U.S.C. § 208) prohibits employees, including White under this arrangement, from acting for the Government on any matter involving a company in which the employee has a financial interest. Edgar asked to see the statute and it was brought to the room where the negotiations were being conducted. In the further discussion, Edgar suggested that the Board make a determination under section 208(b) that White's interests in SWEC and STEMAR were not so substantial as to be deemed likely to affect the integrity of White's services for TVA. Mason said that as proposed the interests were substantial and could not be waived by the Board. Mason suggested that White not order services from SWEC, but that if he needed additional services, he requisition them from the General Manager or some other TVA manager with no interest in SWEC or STEMAR. Willis urged this as a solution consistent with TVA's past practice with regular employees. White and Wegner said that this was an impossible management arrangement that was unacceptable to White. Considerable discussion followed involving all three Board members, Willis, White, Edgar, and Mason. White agreed to provide a disclosure letter as required by section 208(b). He also agreed that STEMAR's markup on BETA personnel would be limited and White determined that it could be limited to not more than 10 percent

and that STEMAR's books would be subject to TVA audit. White said his wife would be keeping STEMAR's books and that Mason should see that he and his wife knew what records STEMAR would need to keep for TVA's audit. White also explained that STEMAR had a take-or-pay contract with SWEC under which STEMAR would be paid by SWEC for White's services whether or not SWEC worked for TVA and without regard to the volume of SWEC's TVA business. He said the take-or-pay arrangement prevented him from being influenced by SWEC in his TVA job. White told the Board that he had no other interest in SWEC other than SWEC's monthly payment to STEMAR for White's services. Despite Mason's and Willis' persistence on the point that White should not be allowed to make any final TVA decision involving SWEC or STEMAR, Dean said that he was satisfied with White's proposal; Waters said that the Board had to decide the section 208 question and that he would do so--that someone might say he had decided wrong, but that he would decide and that White's proposal was okay with him. Last, Freeman held up his hand to indicate to Mason that he had heard him and that the issue had been decided.

In the section 208 discussion, White pointed out that the SWEC personal services contract would have a fixed maximum dollar amount that would be increased only with the Board's approval. Willis said that any increase in the SWEC support services contract would only be approved following the usual TVA process, including the Public Law 98-72 requirements and some competitive process, and that only regular TVA employees would be involved in that recommendation. The Board was in general agreement with Willis.

Edgar explained to Mason that White's tax advisors told him that to avoid having SWEC's payments to STEMAR taxed to White as earned income, STEMAR had to have other substantial business interests. Therefore, he said STEMAR needed to be in the consulting business to have other business interests and that was why Wegner and the BETA people were proposed to be supplied by STEMAR through SWEC.

Edgar and Gallen then prepared the language of section 6 of the MOU, section 8 of the loan agreement, and White's disclosure letter to implement the Board's decision.

In the discussion Mason also brought up again that White would be required to file a Financial Disclosure Report. As he had on December 30 in Washington, White readily agreed that he would do so.

As the discussions with White continued, Mason, Edgar, Gallen, and Bjorkman adjourned to another room to prepare the final contract language as worked out in the negotiations while White, Willis, Matson, and Wegner met to agree on the actual dollar amounts for payments. Subsequently, Willis told Mason that TVA would pay SWEC $28,600 per month for White's services, for other SWEC personnel at the rates set out in the rate schedule, and for STEMAR personnel (the BETA personnel being provided through STEMAR and SWEC) at rates to be agreed upon by him in the future. Willis told Mason the support services contract would be for $8 million, limited to $4 million per year.

Edgar told Mason that the STEMAR personnel rates were so high that White and BETA had decided to make those rates subject to later agreement with the General Manager to keep the rates out of contract documents that might later become public. Mason told Edgar it did not matter where the rates were set out, that all these documents were likely to be made public by TVA.

Willis and the Board members left for the evening. White and his associates went to their hotel. The issue then arose among the lawyers as to whether TVA would reimburse SWEC under the loan agreement and the support services contract in accordance with SWEC's policy on reimbursements for travel or in accordance with TVA's regulations. Mason spoke to Freeman by phone in Willis' absence and Freeman agreed with Mason that TVA travel regulations should be followed. Neither Bjorkman and Edgar nor Mason would concede their sides so two otherwise identical sets of documents were prepared--one using SWEC's and one using TVA's reimbursement rules.

At several points during the day, Mason called Sanger for directions on issues as they were discussed. (note, January 3, 1986)

1/3/86 The MOU between White and the Board and the SWEC loan agreement were approved by the Board members, White and SWEC and executed at the TVA hanger at the Knoxville Airport. (M-81, K-34) The Board members also indicated their approval of a draft of the SWEC support services contract. (M-64)

Mason arrived at the airport early to get the travel reimbursement issue resolved with the Board. When Mason arrived, Craven Crowell was also there. Crowel. said he had an unresolved issue, too. He said the night before, White did not want to publicly disclose the details of the financial arrangements for his services.

Dean was the first Board member to arrive. Crowell and Mason explained the issues. Dean told Crowell it would have to be up to White what was disclosed. On Mason's point, he asked if the Board could not make an exception; that he wanted to get this contract approved. Waters arrived next. He said he did not want to argue with White on either issue. Freeman arrived next. He told Crowell that disclosure was essential; nondisclosure would hurt White's and TVA's credibility, and that TVA needed to disclose the White/STEMAR/SWEC/BETA arrangement. On Mason's issue he said "Of course--there's no question about it."

White and his representatives and the SWEC people then arrived. Freeman told him on Crowell's issue that disclosure would help him eliminate an issue and White agreed. White said that he had decided to agree on TVA travel rules. He said, however, that to cover his costs, the rate TVA would pay SWEC for his services would be $29,600 per month and that SWEC would pass that entire amount through to STEMAR without markup. His disclosure letter was interlineated to reflect these changes. Also, Matson said that instead of a 50 percent markup for administrative and overhead expenses, SWEC would have to have a 100 percent markup as part of its agreement to use the TVA travel reimbursement regulations.

The Board agreed and the contracts were executed and delivered, the personal services contract was initialled by the Board to indicate its approval, and White delivered his disclosure letter. (M-79)

After the signing, White asked the Board into the Machine Shop for a private discussion.

Wegner stopped Mason outside and asked him if he could terminate contracts as well as negotiate them. Mason said yes, what did Wegner have in mind. Wegner said "Qual Tech. We have a problem with Qual Tech and we need to terminate that contract." Qual Tech (QTC) was a contractor for the employee response team at Watts Bar. Mason told Wegner that was a personal services contract that called for QTC to provide services when and as requested by TVA. Mason said TVA could stop requesting services at any time. He also told Wegner of Mason's and Sanger's view of the satisfactory work QTC was doing for OGC on the work on which OGC was responsible. Wegner said they would call Mason after January 13.

Later in the day Edgar called Mason and asked if TVA was going to supply White a car. Mason stated the general rules on use of TVA cars. He also explained that, as an employee benefit and to maintain communications with top managers, TVA

leased radio-equipped cars for certain managers. Mason said it seemed to him that White as a loaned employee would not be eligible, since the loan agreement said he will not receive the benefits regular employees receive. However, Mason explained that the General Manager designated managers who are assigned leased cars and suggested Edgar call Willis. Mason then called Willis and related the conversation. Willis said he thought it would be important for White to have a car with a radio so that TVA could keep in touch with him. (note, January 3, 1986)

* * *

Jim Gray of Representative Cooper's office asked Ken Gray of TVA's Washington Office for information on White's arrangements with TVA. (A-20)

* * *

Mason told M. Dunn, the senior OGC staff attorney with ethics responsibilities, of the contract negotiations and the Board's willingness to make the section 208(b) determination in the face of the conflict of interest.

* * *

At Freeman's suggestion, Mason and others in OGC met with the Department of Labor investigators responsible for pending Energy Reorganization Act complaint investigations involving Nuclear Safety Review Staff (NSRS) members to inform Labor of the arrangements in the TVA/SWEC/White contracts for NSRS to be transferred to the Office of Power.

1/6/86 Sanger returned to the office. Mason briefed Sanger on the contract negotiations; his advice to the Board in the negotiations that a section 208(b) determination could not be made because White's financial interests were not insubstantial; Willis' agreement with the suggestion that Willis place any orders for SWEC services; the Board's section 208(b) determination; and the arrangements as agreed to. He also told Sanger about Wegner's remark about terminating QTC. Sanger met with Willis and the Board members who told him that Mason had done a tremendously good job in these efforts and that they were going to personally speak to Mason. Waters remarked that he had or was going to send Mason a note so stating. Sanger told the Board that while he and Mason appreciated those expressions, that they accepted them with discomfort because they thought the section 208(b) determination was subject to challenge because White's interests in STEMAR and SWEC would not be considered to be insubstantial. Sanger also told them of Wegner's conversation with Mason about terminating QTC.

* * *

Freeman told Sanger and Mason that at the conclusion of the January 3 contract signing White had asked to speak to the Board privately. Freeman said that White told the Board that the negotiations of the arrangements were the most difficult he had ever been involved in and that he was not sure if he would be able to do his job if the Board was going to be so difficult to deal with. Freeman said that he told White that whatever their postures were while negotiating, White would find that he (Freeman) was easy to work with now that the negotiations were over and the work was ready to begin.

1/7/86 — Mason called White to arrange to discuss with White and his wife the records TVA auditors would expect to find upon undertaking an audit pursuant to White's letter to Willis delivered January 3, 1986. Mason and White agreed that D. W. Hulme, Manager of Audit and Evaluation, would meet White on January 22 in Chattanooga for this purpose. (A-30)

1/7/86-2/3/86 — Sanger at various times discussed with Board members and Willis together and individually the difficulty with the Board's January 3 determination that White's interests in SWEC and STEMAR were not substantial for purposes of section 208 and his view that in fact the interests were substantial.

1/9/86 — The Board publicly met with the NRC Commissioners and generally described TVA's arrangements with White. Sanger testified on OGC's work on employee allegations of intimidation and harassment for raising nuclear safety issues, referring to its work with QTC. (E-3)

* * *

C. C. Mason asked Personnel to prepare a personal services contract with SWEC related to translation of design criteria on safety related equipment at Watts Bar Nuclear Plant in the amount of $75,150. (F-4)

1/10/86 — W. E. Mason was asked to speak to Jim Gray of Representative Cooper's office about his questions on White's contracts. Mason did so. Gray asked for written responses and Mason agreed TVA would do so. Mason informed Chris Eckl of the TVA Washington Office of the conversation. (A-20, Mason handwritten notes on January 3, 1986 memorandum)

1/13/86 — White reported for work at TVA.

1/13-31/86 In several discussions over this period, Freeman and Sanger discussed the notion of the Board making a determination under 18 U.S.C. § 208(b)(2).

Under section 208(b)(1) the Board could determine on a case-by-case basis that because particular disclosed interests are not so substantial as to be deemed likely to affect the integrity of a certain employee, the criminal provisions of section 208(a) would not apply. Under section 208(b)(2), the Board could by rule make a general determination applicable to all similarly affected persons that particularly described interests are too remote or inconsequential to affect the employees' services and that therefore the criminal provisions would not apply.

Sanger and Freeman discussed between themselves the advantages of a full public disclosure and discussion--not of any particular loaned employee's interests, but of the generic conflict issue posed by loaned employees working for TVA--followed by formal Board action to consider a rule applicable to all it covered. The advantages included a fully informed public, Office of Government Ethics, and Congress, the preventation of any possibility of an accusation that TVA covered up, and uniform treatment for all loaned employees.

Sanger and Freeman discussed the idea of a section 208(b)(2) determination and Federal Register publication with the other Board members and with Willis. With their acceptance of the general idea (which came to be referred to as the "generic determination"), Sanger suggested it to White on more than one occasion. White had no objection to the general approach.

1/17/86 White called Mason and told him to come to Chattanooga to discuss the QTC contract. Mason did so. In response to White's questions, Mason told White that based on the work QTC did for OGC, OGC did not have the complaints about QTC that others voiced, and that OGC wanted QTC to continue to perform this work for OGC as long as OGC was responsible for reporting on investigations of employee allegations of intimidation and harassment. Mason told White that OGC worked at communicating with QTC and that other TVA managers apparently did not talk to them and that this might be a contributing factor to views that QTC's work was not satisfactory.

White told Mason QTC was threatening to remove the employee response team records at the end of January upon the expiration of contract funding. Mason and White discussed a suit for a restraining order, contract amendments, and other options. White asked Mason to prepare a letter to QTC

90-785 0 - 88 - 2

putting them on notice that QTC was not to remove any records from the Watts Bar site. Mason did so and left the draft with White.

1/20-23/86 After checking with Sanger, Mason insisted in telephone conversations with Denise and R. Brodsky, a BETA consultant, that QTC not be terminated as a TVA contractor so long as OGC was responsible for handling investigations of employee allegations of intimidation and harassment and wrongdoing at the nuclear plant sites. Mason's point was that OGC could not staff up sufficiently to handle the work load for the temporary period before the Inspector General assumed responsibility for the work, that such a staff would be an unnecessary cost to TVA since it would have to be disbanded after the work was completed, that QTC was doing a satisfactory job, and that OGC could not have the Office of Nuclear Power deciding how OGC would carry out its independent investigative work.

1/22/86 Sanger spoke to White by telephone about employee conduct standards. White told Sanger he wanted to be absolutely clean in everything he did. They discussed the conduct rules on meals, gifts, and travel by private company plane. On this subject, Sanger told White that Sanger thought White needed to recuse himself from ordering for TVA from SWEC and that orders from SWEC should be placed by the General Manager. White told Sanger that was what Mason had said in the negotiations and that that was an impossible management arrangement. Sanger spoke to the Board and General Manager about the conversation. (S, Dunn to Sanger, January 23, 1986; T, Sanger to White, January 27, 1986)

* * *

Hulme's meeting with White to discuss STEMAR's recordkeeping requirements for a TVA audit pursuant to White's letter to Willis delivered January 3, 1986 was cancelled, but Hulme provided White with some advice by memorandum. (A-30; M-76)

1/23/86 (approx.) Sanger and Mason met with the Board and Willis to discuss the status of issues involving QTC and the contract extension negotiations. Sanger and Mason explained that as long as OGC was responsible for reporting on I&H allegations raised with QTC, that OGC thought it most appropriate to continue to use QTC to gather the facts, as QTC's work in that area for OGC was adequate. Freeman said that OGC should continue to handle the work with QTC as it had been doing until the Inspector General assumed the responsibility and that Zigrossi could decide how he wanted to handle investigations.

Later that day Brodsky called Mason, obviously upset. Brodsky said "so you went around us and got the Board to overrule us" on the QTC contract and OGC's use of it. Mason explained to Brodsky that OGC worked for the Board independent of the line and that in informing and advising the Board on issues, OGC was not going around anyone, but merely doing its job.

1/24/86 Nuclear Power requested OGC guidance on handling invoices under the SWEC contracts for White and others. (A-28)

* * *

Willis submitted to the Board for ratification and confirmation the Board members' January 3, 1986 sequential approval of the SWEC loan and support services agreements, the MOU, and the Board's section 208(b) determination on White. (A-27)

Sanger informed Willis that OGC had initialled the SWEC support services contract to indicate OGC review for legal form. (A-29)

* * *

At C. C. Mason's request, Mason met in Chattanooga with C. C. Mason, Denise, Siskin, and several QTC people (S. Schum, O. Thero, C. Hill) and QTC's lawyer. Additional funds and a scope of work under the QTC contract were agreed to.

* * *

1/24/86 (approx.) White told Dean and Sanger separately that he did not want to work with Mason because of his lack of creativity in connection with the negotiation of the extension of the QTC contract, and OGC's insistence that QTC continue to investigate the intimidation and harassment allegations at Watts Bar and Sequoyah. Dean told Sanger about those statements and asked Sanger to handle it with White. (J-5)

1/27/86 Sanger requested White to file a Financial Disclosure Report (FDR). (K-33)

* * *

Personnel requested OGC approval of the proposed $75,150 SWEC contract for translation of design criteria at Watts Bar Nuclear Plant. (F-4)

* * *

After discussing with the Board the need for some further action to remedy the conflict of interest situation as to White, Sanger confirmed to White their January 22, 1986 conversation as it related to gifts, travel by private company plane, personal or financial conflicts of interest, the Hatch Act, and similar items. Copies of various TVA releases on employee conduct standards were provided to White. (T, Sanger to White, January 27, 1986; S, Dunn to Sanger, January 23, 1986)

* * *

Zigrossi reported for work.

1/29/86 Nuclear Power was informed by OGC of Sanger's view that the General Manager would have to certify and approve SWEC invoices for the services of White and others. (A-28)

1/30/86 Harold Denton, NRC, issued an order to TVA, copy to QTC, prohibiting the removal or destruction of the QTC records without the further permission of NRC. (Denton to White, January 30, 1986)

1/31/86 Mason was informed by Wegner that there was no need to comment on OGC's draft response to Representative Cooper on Jim Gray's January 3 and January 10 questions about White's arrangements. Wegner said White's visit to Cooper with Dean had handled those questions and no further response was necessary. (A-20)

* * *

Sanger and Mason met with Zigrossi and discussed the establishment of his office and agreed with him that he had assumed responsibility effective January 27, 1986 for receiving, investigating, and reporting to management and appropriate law enforcement officials all matters arising from and after January 27, 1986.

2/4/86 Mason accompanied Hulme and Ron Johnson, TVA auditor, to Chattanooga to review with White and Mrs. White the recordkeeping requirements for STEMAR to meet any TVA audit of STEMAR's books pursuant to White's disclosure letter to Willis delivered January 3. When they arrived White met with them briefly, introduced Mrs. White, and Brodsky; White then left. At the meeting at which Brodsky spoke for STEMAR with Mrs. White's assent, all issues were resolved, including, since BETA was going to keep all backup materials for its invoices rather than duplicate them all for STEMAR, a tentative agreement to be confirmed in writing that BETA's records on this TVA work were also subject to TVA audit. Brodsky confirmed TVA's audit right to BETA's books in a letter to Willis. (M-57)

As he previously agreed to do at White's request, Mason then met with White to review the Financial Disclosure Report filing requirements. In addition to discussing several other questions, Mason told White that he thought the value of STEMAR should reflect the present value of STEMAR's two-year take-or-pay contract for White's services with SWEC. White told Mason he needed an extension of time to file his report. (K-32)

White then discussed with Mason his action in securing from SWEC the services of Richard Kelly, an officer and director of that company and a stockholder of the SWEC parent company, Stone & Webster, Inc., to act as TVA's Quality Assurance Manager. White explained that Kelly would secure additional personnel, some of whom were to come from SWEC. Mason informed White that the action of a SWEC person acting as a line manager for TVA for a limited duration and making decisions that benefited SWEC and that individual financially presented difficulties under section 208. (J-5, J-6, M-30)

White then left Mason with Kelly and Wegner. Wegner explained in some more detail Kelly's relationship to SWEC and Kelly described his variable compensation arrangement with SWEC, including that his bonus and stock bonus were essentially discretionary with SWEC. Kelly said he would not be giving up the authority of his SWEC QA manager job (although he would delegate responsibility to SWEC subordinates) and he would continue to serve on the SWEC Board of Directors. In answer to Mason's questions, both Wegner and Kelly explained that Kelly would have TVA authority to order engineering services from SWEC. Wegner said that the TVA Board had a few minutes earlier approved White's selection of Kelly and that Wegner needed to release that announcement for publication. He was insistent that it be announced immediately. Mason told Wegner and Kelly that Kelly's

interests as a SWEC officer, director, employee, and stockholder and his anticipated TVA authority to order from SWEC created a situation covered by section 208 that Mason could not approve and that he did not believe the Board had waived when it approved White's selection of Kelly. Mason adjourned the meeting saying he would have to consult with the General Counsel. Wegner urged that it be done quickly.

Sanger was out of the office on other business matters and not immediately available. Mason did reach Willis. Willis said he had not known Kelly was a SWEC director and that he had not raised any conflict issue with the Board members when they each approved Kelly and that the members had made no conflict of interest determination.

Wegner convened another meeting attended by him, Kelly, Mason, Matson, and Siskin. After the meeting had gone on about 30-45 minutes, White came in briefly, looked around, said "I can see you have not worked it out yet. I'll leave you to it," and left. In the meeting, Mason asked if Kelly had to be a loaned employee to accomplish the necessary TVA work. All the SWEC people agreed that he would have to be in a position to make TVA decisions as a TVA manager. Mason asked if Kelly would have to use SWEC or order services from SWEC to do his TVA job. All the SWEC people said he would and that a recusal would not work. They also explained that Kelly's assistant at TVA would be another SWEC employee named Huston. Mason said Huston's situation was the same as Kelly's with respect to the conflict of interest statute. When the SWEC people suggested Mason was preventing White from getting the people White needed to carry out his Nuclear Power job, Mason explained that based on the section 208 determination for White there was nothing to prevent White from putting Kelly in the TVA QA job as the Board had approved and using him; that the restriction was also for Kelly's benefit that he not do TVA business with SWEC to keep from violating the Federal criminal law.

After that meeting Mason discussed the matter in a conference call with Sanger and Willis and then informed White and Wegner of the problems under section 208, the actions that had been discussed to eliminate or minimize the problems (e.g., Kelly not a loaned employee, Kelly's TVA authority to order from SWEC eliminated or restricted), and how some such actions would have to be taken for the Board to have a basis for determining the conflict to be insubstantial under section 208.

White told Mason that those kinds of actions would result in unworkable management arrangements and were unacceptable. Mason told White that Sanger and Willis had arranged to brief the TVA Board the next morning to inform the members of any

necessary determination. Mason was present in White's office when White called Willis to urge him to have the Board act to resolve the conflict, as White said he had to be able to bring to TVA Kelly and others in like circumstances and had to do so before his February 18 NRC meeting. (J-5, J-6, M-30)

2/5/86 White called Sanger about 9 a.m. while Mason was in Sanger's office. White related essentially the same information he had told Mason. White said that he wanted to work directly with Sanger since Sanger was creative and Mason was inclined to give negative answers. Sanger told White that he would be glad to talk with White at any time. White then said that he wanted an answer to his arrangement with Kelly by noon and he wanted the right answer--that Kelly and any other similar persons secured by White could secure the services of any persons they wanted and that neither Kelly nor any others would be required to file financial or employment information with TVA. Sanger told White that he had previously considered the matter and thought the answer given by Mason was correct but that he would give him an answer by noon. White repeated his insistence that the answer be the right answer. Sanger again personally reviewed the applicable statutes and case law and, after discussing the matter with the Board and General Manager, called White about 11:00 a.m. White's secretary said White was with some persons in his office. White did not return Sanger's call, and Sanger's call was again placed about 12:30 p.m.; White's secretary was asked to tell him Sanger was calling. In the meantime White had called Willis to discuss the same matter. White told Sanger that he had not been informed of his call and that he would straighten out his telephone call arrangements.

In this second February 5 conversation, Sanger confirmed his and Mason's earlier advice to White stating that persons such as Kelly exercising line management functions and subject to TVA control would be considered employees by common-law standards and would have to meet the requirements of section 208. As had been discussed with the Board, Sanger described the minimum requirements for this to be done, including the financial disclosure for the Board to have any information on which to consider making the section 208(b) determination.

The considerations that Sanger discussed with White for Kelly to occupy the TVA QA Manager position and order for TVA from SWEC included a full disclosure of his SWEC interests, a leave of absence from his SWEC duties, his nonparticipation in any SWEC variable compensation arrangements, an arrangement within the Office of Nuclear Power that would limit Kelly to being consulted (not approving) TVA use of SWEC services, the use of the existing limited SWEC contract only,

and the fact that SWEC's total business is large relative to TVA's business with SWEC. White told Sanger the proposal would not allow White to manage the way he wanted to; he said that he wanted to be able to turn an entire problem over to Kelly (e.g., Appendix B) and for Kelly to be able to do everything necessary to handle it. If Kelly could not order people from SWEC as needed, he could not operate in that fashion. White said that operating under such arrangements would force him into management arrangements different from those he wished to have. (J-5, J-6, M-30)

Such threat if you want to spend $ than $ on Sanger!

2/6/86

Gallen and Bjorkman called Sanger and Mason. Gallen said White had a problem with the advice Sanger and Mason had given on Kelly because it prevented him from using SWEC people as he had anticipated when he came to TVA. Gallen said the SWEC people were also not interested in making any personal financial disclosure. White subsequently called Sanger.

Sanger told White that the financial disclosure under section 208 should not pose any problem to the SWEC people who were assuming TVA positions since such employees would have to file financial reports under the Ethics in Government Act of 1978. White said this was not the advice he wanted. White said that the SWEC people were not in the same position as he and that he had voluntarily agreed to file the Financial Disclosure Report. Sanger said he thought White and the SWEC people were required to file but that since White did not disagree, in his case, there was no issue. Sanger told White he would confirm in writing this advice about the Ethics in Government Act. (J-5, J-6, M-30)

Sanger then advised White in writing of Sanger's opinion that White was required by the Ethics in Government Act to file the Financial Disclosure Report even though White was in a contractual relationship with TVA rather than occupying an appointed Government position. (K-38)

Willis called Sanger about 6:00 p.m. on February 6 and said that White and some of his aides wanted to meet with the Board that night in Knoxville. Sanger was in his office and told Willis that he was available at any time. Willis said that he was going to schedule the meeting for 7:15 a.m. on Friday, February 7 and wanted Sanger present.

Freeman called Sanger's home that night after Sanger's conversation with Willis. Sanger returned the call from his office to Freeman and went through the entire matter with Freeman, who stated that TVA must comply with all legal and ethical requirements. Freeman said that he was not going to take a position on an ethical question different from the

advice of TVA's General Counsel and he stated his view that Sanger's advice was correct. Sanger had, as indicated, informed Freeman and Waters of developments in this matter as they had occurred. Sanger called Dean's home to arrange to talk with him upon his arrival in Knoxville that night and did so, relating the entire matter to Dean. (J-5, J-6, M-30)

2/7/86 The Board, Willis, Sanger, and Mason assembled in the 12th Floor conference room before 7:15 a.m., the appointed time. After some waiting, they were told that White and his aides would be late because each had been driving separate rental cars to the Chattanooga airport and all were not there in time to depart as scheduled. Upon the arrival of White and others, including Wegner, Edgar, Gallen, Matson, Bjorkman, and at least one other SWEC person, White said that he would meet with the General Manager and the Board in the General Manager's office. Sanger and Mason were not in that initial discussion. While it was going on, Sanger and Mason met with Crowell and explained to him the issues being discussed and their fear that these conflict of interest issues would result in a scandal seriously affecting TVA.

White, Willis, Dean, and Waters then came into the 12th floor conference room where Sanger, Mason, and the others assembled. White stated that in giving his opinions on the Ethics in Government Act and section 208, the General Counsel was determining policy and that the correction of the problems with TVA's nuclear plants was an enormous matter requiring emergency action. White said that Sanger and Mason did not realize, but that he would report on February 18 that the nuclear program was in critically serious trouble. He said "the patient is dying." He said that Sanger and Mason are "interrupting the surgeon during open heart surgery on a dying patient" with these questions and objections to the way he was performing the surgery. Sanger stated that he was giving the Board his opinion on the law and ethical questions as was his responsibility and that the Board well understood what was being done. Sanger stated that he stood second to none in his willingness to help in resolving nuclear plant problems, but that there was no emergency exemptions from complying with laws and asked for White's help in obtaining the facts to properly and most advantageously apply the law. White stated that he viewed these conflicts matters as involving questions of his personal integrity and that he would not do a job that affected his integrity. He said that Sanger and Mason had said he was an employee for purposes of section 208 and the Ethics Act. He said again that he was voluntarily complying with the Financial Disclosure Report filing requirements. He went on to say that he thought since he was an employee for purposes of those two statutes, he would be considered to be an employee for purposes of the

Dual Compensation Act. Dean said he did not think that the issue involved anything for the Board to determine. When Sanger started to respond to White, White interrupted, saying he was not a lawyer, he had his lawyers with him, and the lawyers would have to work this out, and White left the table.

Sanger and Mason met with Edgar and Gallen several times during the day. Bjorkman also sat in several of the meetings. Sanger stated that he and Mason represented TVA and that this session was troublesome since these were TVA issues. Edgar responded that he felt some sensitivity also and that he really preferred not to be here. Edgar and Gallen had represented White when he entered into his working arrangement with TVA. They had been in Chattanooga the previous day, had discussed the issue with Willis, and had called Sanger and Mason saying that from these discussions with Willis, they thought a conclusion of the matter had been reached.

Sanger and Mason told Edgar, Gallen, and Bjorkman that it seemed to them that White's excitement was based on a lack of understanding that one individual in one service relationship might meet some definitions of employee for particular legal purposes but not others. These outside lawyers were also told that while TVA would make its own conclusions, a representative of the Office of Government Ethics (OGE) had told OGC that OGE viewed White and any others performing such functions under similar arrangements as employees for purposes of the financial disclosure requirements of the Ethics in Government Act of 1978. Bjorkman said that such requirements were unacceptable since the disclosure of financial information, certain aspects of which were secret among SWEC employees, would have a chilling effect on SWEC employees. Sanger and Mason stated that every entity in the Government had made similar remarks when the Act was proposed, that no Government entity supported the Act, that the then President did not support it, but that it was passed by an overwhelming cumulative congressional vote and TVA could not refuse to abide by the statute on such rejected notions or any others if the Act applied in any circumstance.

Edgar and Gallen gave Sanger and Mason a draft of a letter which they proposed to have White send to Willis. Edgar and Gallen in doing so explained that they were not employment lawyers but had been initially retained by White (presumably in White's capacity with STEMAR since he has no authority to do so in his functions with TVA) to advise him what he would have to show the NRC to ultimately get NRC concurrence for resuming the operation of TVA's nuclear plants if he undertook the TVA responsibilities.

Sanger and Mason explained to Edgar, Gallen, and Bjorkman the hornbook concept of loaned employee as being created as a matter of law where, as here, an employee of one entity (the general employer) performed agreed-upon duties for a second entity (the specific employer) in an employee-employer relationship to the specific employer. They also explained sections 3 and 9 distinctions of the TVA Act, the Federal Government position that only officers and employees can execute Government functions and make Government policy, and their view that Edgar's, Gallen's and White's sudden worry about the Dual Pay laws seemed to be late since White had already assumed his responsibilities and misplaced since 5 U.S.C. § 5331 (1982) exclusively defined the positions covered by those laws and White had not been appointed in such a position. Several changes were then made in the draft White to Willis letter. Sanger and Mason explained that they considered White and other such persons working for TVA to be covered by section 208 and the financial disclosure requirements of the Ethics in Government Act of 1978. The outside lawyers did not state any disagreement about section 208 (presumably based on their conclusions in their initial representation of White during which the TVA Board made a determination under section 208(b) following certain disclosures by White). Sanger and Mason accordingly asked that the second paragraph of the letter be concluded with either of two sentences: "I understand that I may be considered to be an employee for other purposes" or "I understand that TVA may consider me to be an employee for other purposes."

Edgar, Gallen, and Bjorkman left Sanger and Mason intermittently during the day to meet with White and Wegner. They returned to Sanger at various times asking if the problems could be avoided by TVA contracting the entire management of the plants to SWEC and if the Board would do so. Sanger talked about the different aspects of the first point; as to the second, the lawyers said that would be a Board determination.

Edgar and Gallen returned for the last time in the early afternoon. They said that White was panicked by the approaching February 18 session with the NRC at which he was to describe his approach to managing and operating TVA's nuclear plants. Edgar said the revised draft letter would be acceptable to White if OGC would not insist on including either of the above described alternative sentences and that White would require SWEC personnel (Kelly and any others) as well as other such personnel to make the financial report required by the Ethics in Government Act of 1978. Edgar also provided draft form letters which if completed would give the kind of financial disclosure information the Board could use to consider a determination under section 208(b)

with respect to Kelly. During the day, Bjorkman of SWEC said that if SWEC employees filed the reports they would add a statement on them that they did not consider themselves employees.

Sanger explained the need for one of the two alternative sentences as being for the purpose of clear understanding by White and any others of Sanger's and Mason's view that the financial disclosure requirements of the Ethics in Government Act of 1978 and section 208 applied to White, Kelly, and any other such persons and that he would agree to omitting either of the sentences only if White so understood. Edgar and Sanger met with White, and this was explained to White. White said he understood this to be Sanger's position. White asked Sanger not to leave for lunch since the Board members were being assembled and that White and Sanger would inform the Board of the resolution of the discussion. Sanger and Mason waited until about 3:45 p.m. when Sanger went to the 12th floor and asked about a discussion with the Board. The General Manager told him that White had met with the Board, referred to the letter as resolving his situation, and said he would try to get SWEC personnel and any other such personnel to make the reports under the Ethics in Government Act of 1978 and the disclosures necessary for the Board to consider a determination under section 208. Willis told Sanger that White said he did not want to work with Mason on legal matters but wanted to work directly with Sanger, to which the Board responded that White and Sanger would have to work that out. The General Manager said White told the Board he would not under the circumstances ask the Board to make a determination contrary to the advice of the General Counsel. Willis did not report to Sanger or Mason on any other individual Board statements other than to say that Director Waters said to White he was glad the matter had been resolved and he was sorry that it took this much time and effort to get to this point. (J-5, J-6, M-30)

During Sanger's and Mason's discussions with White's and SWEC's lawyers, Gallen gave Sanger and Mason draft documents of proposed section 208 disclosure letters and a TVA determination that he suggested be used as the forms for the Board's determinations under section 208(b) for Kelly, Drotleff, Huston, and Kirkebo. (M-69)

In the conversations during the day, Sanger informed White that OGC would continue to do everything possible to give legal assistance at any time. White told Sanger four times during the week that he would go back to the farm if his wishes were not met. Sanger's response to those statements was that OGC would help him in every possible way and he hoped White would get on with the job of bringing TVA's nuclear plants to safe operation. (J-5, J-6, M-30)

2/10/86 Sanger called White to advise him on an issue White had raised with Willis earlier. The issue was the status of White, Kelly, and others on liability for their personal actions while performing services for TVA. Sanger pointed out to White that the loan agreement for Mr. White's services provides:

> SWEC shall carry Workers' Compensation Insurance as required by applicable law, and the compensation paid by TVA under this agreement includes the cost of such insurance. Exclusive of claims subject to SWEC's workers' compensation insurance coverage, TVA agrees to indemnify and hold harmless SWEC, its officers, directors, agents, and employees, including Mr. White and any other person providing services hereunder, from any cost, claim, or liability against SWEC or any of them resulting from or arising out of Mr. White's or any other person's performance under this agreement.

Sanger advised White, moreover, that this was a circumstance where he and others would undoubtedly be more pleased to be termed employees since TVA's policy is to defend employees and pay any judgments rendered against them for such actions upon the execution by them of an agreement the substance of which was explained to White. Sanger contrasted this to the much more restrictive general Government policy under which the Department of Justice may defend employees but the employees are personally responsible for any judgments rendered against them. Sanger offered to call Edgar to explain the matter to him since White had talked to him about it. Sanger did so.

Edgar understood both the indemnity and agreement as being dispositive. He remarked that SWEC personnel were fidgeting about matters that were not issues and followed that by saying that if he had had Friday's (February 7, 1986) discussion with Sanger before he, White, and others came to Knoxville, the entire matter would have been avoided because they all understood the various concepts and statutes that they had not previously understood. He said that White was now calmed and that he thought White would now be more inclined to work more cooperatively. Edgar remarked that the whole matter was unnecessary to which Sanger responded that in his 25 years of TVA legal work, no one had ever come as close to insisting on an inappropriate legal conclusion and in Sanger's view, the most disturbing aspect of the matter was that more than five minutes had been spent before all

agreed that regardless of the condition of TVA's nuclear plants, TVA must abide by proper conflicts standards which are not only inherent in good business arrangements but provided for in the law.

Edgar and Sanger candidly discussed Edgar's role as being a personal lawyer to White and that he was not to advise White on any TVA legal matters. They agreed that White understood this clearly. (J-5, J-6, M-30)

* * *

White approved a request from ONP to Personnel to prepare a $40,200 personal services contract with SWEC to review TVA's plans to respond to the NRC's 10 C.F.R § 50.54(f) request on Watts Bar Nuclear Plant. The work began on December 9, 1985 and was to end by February 28, 1986. (G-4)

* * *

Sanger approved White's request for an extension to March 31 to file his Financial Disclosure Report. (K-31, M-54)

2/11/86 White called Sanger saying that White knew Sanger's views about who does TVA's legal work and you (Sanger) are my lawyer. White said he wanted to secure the services of a writer who happened to be a lawyer to rewrite a volume that was to be presented to the NRC and wanted to know Sanger's views about it. Sanger responded that as long as the person was not doing legal work, he had no objection. Sanger informed Freeman of this conversation. Freeman said that White's involvement was already extensive and, as a director, he fully intended that White not direct any legal work. Sanger and Freeman had a brief discussion about the ethics issue involved. (J-5)

* * *

Throughout the day, Sanger discussed the section 208 issue with the individual Board members and Willis. Sanger told the Board members and Willis that he and Mason were preparing a files note on the events of the past several days. Sanger gave copies to Willis and Freeman and asked them each if they had any different recollection of the events described. Willis read it and, with a modification of the reference to Waters' statement to White after the February 7, 1986 meeting, agreed it was correct. Mason and Sanger incorporated that modification. Freeman read the draft and told Sanger he agreed it was correct. (J-7)

2/12/86 Dean, Freeman, Willis, Sanger, and Mason met in Willis' office to discuss White's request that the Board make a section 208(b) determination as to Kelly, Drotleff, Huston, and Kirkebo so that they could act on behalf of TVA in ordering services from SWEC. Waters was out of the office, but participated by conference telephone.

Sanger and Mason advised that the interests those employees, officers, directors, and stockholders had in SWEC were substantial.

Dean asked Sanger if he were a board member would Sanger vote to approve the determination. Sanger said, "[Expletive], no." Dean asked Sanger what he said and Sanger said "[Expletive], no," apologizing for the language but indicating he wanted his answer to be clearly understood. Waters then asked what the question was and Dean told him he had asked Sanger if Sanger would vote for the determination and that Sanger said "[Expletive], no."

Sanger then told the Board he wanted to explain the determination and section 208 to them one more time for Dean's benefit, since the other two members were lawyers and could more easily have understood it clearly initially. Sanger did so, citing from the Mississippi Valley case and other interpretive materials.

Dean then said that he thought the determinations should be made so that these people and others could get to work for TVA.

When asked, Sanger told Waters that he thought the determinations the Board was being asked to make might be challenged because the interests were in fact substantial. Dean asked if Sanger would defend the determinations if the Board made them. Sanger said that he thought the determinations could be challenged but if the Board went ahead, he would attempt to defend them as best as he could. The Board then directed Sanger and Mason to prepare the documents necessary for the members to sequentially act on White's request for the determinations.

Freeman told Sanger that he would be unwilling to approve those determinations as he thought the idea of having a contract manager selecting additional contract managers who would be authorized to order services from the contractor went far beyond anything he thought was possibly defensible.

* * *

Matson disclosed certain financial interests that Kelly, Huston, Drotleff, and Kirkebo had in SWEC in support of the proposed section 208(b) determinations. (M-41)

2/13/86 Willis told Sanger and Mason that the documents for the Board's section 208 determination should not include his recommendation that the Board so act. Mason prepared and Sanger delivered to Willis necessary documents for the Board to consider in connection with White's request for section 208(b) determinations on Kelly, Drotleff, Kirkebo, and Huston.

Dean and Waters approved the determinations. (M-39, M-40, M-41)

Sanger and Mason prepared and released a files memorandum, copies to Dean, Freeman, Waters, Willis, and Zigrossi, recording events of February 4-13 on the conflict of interest issues raised by TVA continuing to engage additional SWEC officers, directors, employees and stockholders to serve in TVA loaned employee positions with authority to order services on behalf of TVA from SWEC. Crowell read the files memorandum in Sanger's office. (J-5)

Freeman resigned.

2/14/86 Carrying out the agreement reached at the February 7 meeting in Knoxville, White sent through Sanger a letter to Willis confirming the understanding that he is not, and is not deemed by TVA to be, a regular TVA employee under Section 3 of the TVA Act, a special Government employee under 18 U.S.C. § 202, or as holding a position under the military retiree dual compensation statute, and that he had agreed to abide by all TVA rules while a loaned employee, including those on employee conduct, conflicts, and ethics. (A-10)

* * *

SWEC counsel confirmed to Mason that SWEC's overhead burden under the loan and support services agreements was reduced from 100 percent to 85 percent. (F-5, F-6)

* * *

SWEC (Matson) proposed to Willis that BETA personnel rates be established under the loan agreement at $127.50/hr. (A-8)

* * *

At a public meeting, the Board ratified its earlier sequential approval of the January 3 SWEC/STEMAR/White arrangements. (F-2, Board Minute Entry 1363-13.)

2/18/86 Waters told Sanger that Sanger's and Mason's February 13, 1986 files memorandum was not as good as their work usually was. Waters said the memorandum caused Waters to have the worst weekend of his life. Sanger told Waters the events recorded had caused Sanger to have the worst week of his life.

* * *

Representative Flippo asked Dean for information on the cost to TVA and its ratepayers of the arrangements for White's services. (A-14)

* * *

Willis gave to Sanger to secure in OGC's safe Willis' copy of Sanger's and Mason's February 13 files memorandum. (J-6)

* * *

On Nuclear Power's request for the $75,150 SWEC contract for translating design criteria, Sanger advised Personnel, copy to Willis and White, that the work could be performed under the SWEC support services agreement; there is no information in the record that other contractors were considered; the Board made other determinations at the time it approved the SWEC support services contract on the basis, among others, that the support services contract was the one under which Nuclear Power could order services from SWEC, and limited it accordingly. Therefore, Sanger suggested the services be obtained under the support services contract or that Board approval be obtained. (F-4)

* * *

The Nashville Tennessean made an FOIA request for documents related to the TVA/SWEC contracts. (M-27)

* * *

Originally scheduled date for White's presentation to the NRC on February 18 was postponed to March 11.

2/18/86-4/1/86 After the two remaining Board members approved the section 208(b) determinations for Kelly, Huston, Drotleff, and Kirkebo, Sanger discussed on several occasions with the Board members individually and together that the section 208(b) determinations for White and the others were not proper based on the facts, that the conflict of interest inherent in the arrangements had the potential of creating a scandal, and

90-785 0 - 88 - 3

that the Board needed to act to correct the situation. Waters said to Sanger in several of these discussions, "White won't agree to change the contracts" or "White won't like that suggestion." Sanger pointed out that TVA was the buyer of the services and that the Board was responsible for the exercise of the powers of the corporation. After Sanger had made these points on a number of occasions and the Board had not agreed to take any corrective action, Sanger explained to the General Manager and the Board members individually and on occasions when they were together that the unsupported determinations had existed for so long without correction and contrary to the Board's lawyers' advice that Sanger was afraid that someone might suggest that the Board members were acting as aiders, abettors, or accessories to criminal violations of section 208.

2/19/86 Sanger provided SWEC counsel as requested copies of TVA's employee conduct, conflict, and ethics standards. (F-3)

2/20/86 Personnel requested OGC approval of the $40,200 SWEC personal services contract to review TVA's plans to respond to NRC's section 50.54(f) request on Watts Bar Nuclear Plant. (A-14, G-4)

* * *

White called Sanger and told him that White needed a lawyer to work with to prepare loan agreements for Bechtel managers to work at TVA. He asked Sanger to assign Lewis E. Wallace, Deputy General Counsel, to do the work. Sanger told White that work was in Mason's area of responsibility and asked why shouldn't Mason do the work. White told Sanger, "when Mason comes in the room the whole atmosphere changes." White asked if William L. Osteen could handle the contract work. Sanger told White that this contract work was not in Wallace's area, but that Osteen could handle it. (M.D. February 20, 1986)

2/21/86 Sanger called White about the section 208(b)(2) generic determination. Wegner was present with White. White told Sanger he wanted OGC to prepare a draft paper from White to the Board on safeguards established to limit or protect loaned employees from taking actions for TVA in conflict situations. (M.D. February 21, 1986)

2/24/86 Representative Schroeder asked Dean for TVA's side of the story before she pursued "the avenues available to me to cancel this arrangement." Referring to the pay limitations on Government employees, she labelled the contract fraudulent and an affront. (B-17)

* * *

Sanger requested Drotleff, Kelly, Huston, and Kirkebo to file Financial Disclosure Reports. (K-6, K-14, K-22, K-26)

* * *

Sanger spoke to White by telephone regarding the Bechtel loan agreement and personal services contract that Osteen was drafting on the terms ONP requested. Sanger pointed out the conflict issue in Bechtel loaned employees ordering services for TVA from Bechtel under the Bechtel loan agreement. White agreed that he, not the Bechtel loaned manager, would be responsible for selecting additional Bechtel persons. White told Sanger that he wanted a form loan agreement that he could use with other contractors; he would handle filling in the blanks with the contractor's name, address, rate of pay, and otherwise. (M.D. February 24, 1986)

* * *

Sanger talked to the Board and Willis about the Board considering a section 208(b) generic determination on conflicts of interest for all contractor loaned employees. The generic determination would be published in the Federal Register. Sanger was told to provide the Board a draft of the determination covering all loaned employees. He assigned Mason to draft language which as in the case of other 208(b) determinations would be a means for the Board to look concretely at the matter. (M.D. February 24, 1986)

2/25/86 QTC (Thero) called Mason about a rumor going around the Watts Bar site that SWEC was to eventually have 8000 engineers and other employees at work at TVA. Mason told Thero when the Board approved the January 3 SWEC contracts it was contemplated that any additional SWEC contracts would be obtained using TVA personnel without interests in SWEC conducting a competitive solicitation and would require TVA Board approval at a public meeting. (M.D. February 25, 1986)

2/26/86 Osteen worked in Chattanooga with White and Webber to prepare drafts of loan agreements as requested for Bechtel, Westinghouse, and GE. The plan was that those loaned employees would be able to act for TVA on business with their parent companies if the Board made a section 208 determination. (M.D. February 26, 1986) While Osteen was there, Gridley, a loaned employee initially through SWEC from GE, raised to him some Financial Disclosure Report questions and questions about the disclosure required by section 208(b). (M.D. February 26, 1986)

2/27/86 Representative Schroeder's request for TVA's side of the story was referred to the Information Office for response. (B-17)

* * *

Sanger received reports from D. Nichols of OGC and Chris Eckl of the Washington Office of statements passing among TVA employees and attributed to White that ONP was dissatisfied with OGC's "less than cooperative attitude." (M.D. Feburary 27, 1986)

* * *

Sanger sent White a draft of the generic section 208(b)(2) determination for his comments. (M-25)

2/28/86 Representative Schroeder's February 24 request for TVA's side of the story was reassigned to OGC. (B-17)

* * *

SWEC sent Willis a draft Supplement No. 1 to the SWEC loan agreement to establish flat hourly rates for SWEC personnel providing services under that agreement. (A-12)

* * *

P. Richards, an associate of Edwin Steir's, the evaluator White hired to review NSRS, interviewed Mason while Steir spoke to Sanger. Steir told Sanger that Steir had heard about Mason from SWEC people in Chattanooga and that the stories about Mason's inflexibility and lack of imagination sounded funny to Steir and were not consistent with what Steir heard about Mason's work from others in his interviews involving NSRS. (M.D. February 28, 1986; March 3, 1986)

* * *

Matson wrote to Willis disputing OGC's determination that loaned SWEC managers were required to file Financial Disclosure Reports under the Ethics Act and asking what other laws and policies might be applicable to them. (A-9)

3/3/86 Willis, Sanger, and Mason met on two items: SWEC's (Matson) request to amend the SWEC loan agreement to provide a flat hourly rate for SWEC loaned employees (Willis asked Sanger and Mason to work with SWEC (Greer) to get the agreement in proper form for Willis' consideration. Mason was assigned to work with Greer). The applicability of Section 9(b) of the TVA Act to the TVA/SWEC contracts in reference to Schroeder's letter was also discussed. (M.D. March 3, 1986)

* * *

Sanger advised White in a memorandum on steps ONP might take to protect against disclosures to loaned managers of proprietary information belonging to other companies and in TVA's possession. (Q, Sanger to White, March 3, 1986 in Oi2 Bechtel file)

3/5/86 SWEC (Bjorkman) called Mason to find out what the procedure was to obtain extensions for loaned employees to file their Financial Disclosure Reports. He also asked for copies of the section 208(b) determinations the Board made as to Kelly, Drotleff, Kirkebo, and Huston on February 13, 1986. Mason told him the determinations had blanks in them but would be available to SWEC when completed. (M.D. March 5, 1986)

* * *

Laura Simmons, The Knoxville News-Sentinel, called Mason about that day's article by Randell Beck, The Knoxville Journal, which had discussed the markups in the SWEC loan agreement and other contract terms. Simmons asked Mason if he had participated in the negotiations leading to the contract. Mason answered yes. Simmons asked Mason how the contract overheads worked; Mason asked her if she had the contract and when she said she did, he referred her to the contract exhibit that lays out the overheads and told her that the exhibit was self-explanatory. They ran through the arithmetic of an example together. She then asked Mason about the views and posture of the Board members on the contract negotiations and his advice. Mason told her twice that he was an attorney and could not answer her questions because he would not breach the confidence of his client; he explained he had a professional obligation to maintain the confidences of his client. Simmons asked if it was unusual for the Board and General Manager to personally be involved in contract negotiations. Mason told her that it was unusual (but not unheard of) for the Board and General Manager to be involved in contract negotiations, but that the Board always interviewed persons selected to fill senior TVA management positions. (M.D. March 5, 1986)

* * *

Mason spoke to Greer by phone about SWEC's proposal for SWEC employees to be provided under the loan agreement at a flat rate of $55 per hour. Greer said that the weighted average of the billable rates for SWEC personnel then at TVA or expected to be assigned (including Kelly, Huston, Drotleff, Kirkebo, L. Nace, Sullivan or Siskin, and Matson or Greer) was $63 per hour. He said SWEC Chairman Allen had determined that SWEC should not charge TVA more than $250,000 per year per person and that the SWEC rate had to be further reduced to $55 per hour to get the per year cost down to $250,000 when the overheads were added in. Mason objected to the draft language on audit. Greer agreed the rate would be fixed but the hourly use of the rate was subject to audit. (M.D. March 5, 1986)

* * *

Richard Parker called from Watts Bar Nuclear Plant and asked Mason about the status of a personal services contract that he said White wanted to handle some Employee Concern Program work at Watts Bar. Mason told Parker that contracting with SWEC involved other considerations and that it might not be possible to do what Parker wanted.

Mason then spoke to Webber about Parker's call. Webber said that he had heard about a $500,000 contract and mentioned it to Parker several weeks earlier. However, Webber said ONP had since received OGC's February 18, 1986 memorandum on the conditions for contracting with SWEC. He said that Nuclear Engineering had recently gone ahead with a $13 million contract with Bechtel that would cover the Employee Concern Program work Parker was talking about, but that ONP had a letter from SWEC describing the work SWEC could do. Webber said that Sequoyah Nuclear Plant also wanted to use the same SWEC contract for some of its Employee Concern Program work. Mason and Webber agreed that such a contract could only be requested in accordance with OGC's February 18, 1986 memorandum. (M.D. March 5, 1986; M-23)

3/6/86 Mason reported to Willis on his conversation the previous day with Greer on the amendment to the SWEC contract. Mason was in Willis' office when Dean came in. Dean asked Mason if he talked to Beck about the March 5, 1986 article. Mason said he had not. Dean said it was not correct anyway. Mason agreed it was not correct in some aspects. He then told Dean about the discussion with Greer on the flat rate.

Mason subsequently spoke to Greer by phone. Greer told Mason SWEC was referring all press inquiries on the contracts to TVA to handle. (M.D. March 6, 1986)

* * *

Bjorkman called Mason about the SWEC loaned employees' Financial Disclosure Reports. He said that they were working on consistent descriptions of each SWEC compensation plan for the loaned employees to use in making individualized responses on the required forms. In response to his point about the FOIA, Mason told him that Financial Disclosure Reports were available by statute upon request. Bjorkman told Mason that the SWEC employees' Financial Disclosure Reports would satisfy the intent of the statute. (M.D. March 6, 1986)

* * *

At the public meeting, Willis and Dean announced that TVA and SWEC were agreeing on a flat hourly rate of $55 per hour for SWEC personnel working under the loan agreement. (M.D. March 6, 1986)

* * *

Waters called Mason at the end of the day. He said he had been meeting with Ron MacMahon, publisher of The Knoxville Journal, Beck, and Crowell; that Beck had six information requests in to TVA that were not fulfilled, including one having to do with a survey of nuclear plant employees; and that Waters wanted Mason to get with Crowell to fill the requests immediately. Mason subsequently met with Crowell and Alan Carmichael, who told him that MacMahon said he would sue TVA on Monday on his FOIA requests if he did not have the documents by then. Mason discussed with them that Beck's request for SWEC documents included the Board's February 13 section 208 determination on Kelly, Drotleff, Huston, and Kirkebo, but that the documents still had blanks in them. Also his request would include the Federal Register generic determination but it was still in draft form. (M.D. March 6, 1986)

* * *

3/7/86 Representative Flippo asked Dean a second set of questions on TVA's arrangements and costs for White's services. (A-14)

* * *

SWEC counsel asked on behalf of SWEC employees, Drotleff, Kelly, Kirkebo, and Huston, for extensions to file their Financial Disclosure Reports. (K-4)

* * *

Crowell responded to The Nashville Tennessean's February 18, 1986 Freedom of Information Act request, providing documents relating to the TVA/SWEC contract. (S, Crowell to Jarrard, March 7, 1986)

* * *

Sanger spoke to White by phone and specifically discussed the negative comments being made about Mason. Sanger told White that they had to be fair about Mason. Sanger told White that he would defend the Board's authority to enter into the SWEC contracts. He told White that consideration of the generic section 208(b)(2) determination he had sent White could provide a basis for the Board considering issues on the proper implementation of the arrangements. (M.D. March 7, 1986)

3/7/86-4/1/86 Sanger, Mason, White, Denise, Zigrossi, and QTC (Thero and Hill) had numerous telephone discussions, meetings, and correspondence on what if any extension of the QTC contract there should be. OGC's expressed interest in the discussions was to use QTC to provide the facts to OGC on I&H cases so long as OGC was responsible for doing that work. Zigrossi's preparedness to assume responsibility for wrongdoing and I&H cases was discussed and his determination not to work with QTC on matters assigned to his office. Major amounts of time were spent on confidentiality and reports retention matters. The NRC January 30 and subsequent order affecting these documents were considered and discussed. When it became apparent that QTC and TVA were not going to be able to reach agreement on continuing, Sanger and Mason urged that some transition arrangement be worked out to keep from losing work in process at QTC. (ONP and QTC agreed to extend QTC's work for this purpose from March 31 to April 12 and 21 I&H case files were completed and turned over to OGC.) (M.D. March 7, 1986 to April 1, 1986)

3/8/86 The March 8 Knoxville Journal, in a copyrighted article by Beck, on the TVA/SWEC contracts, quoted Waters: "It's an extremely complex legal situation . . . . You've got the ethics in government act and the conflict of interest law . . . . Our lawyers have been trying to figure out how to handle it."

3/10/86 Zigrossi returned his copy of Sanger's and Mason's February 13 files memorandum for safekeeping "as a result of all the interest in this matter." He wrote Sanger "I believe it was sent to me for information." (S, Zigrossi to Sanger, March 10, 1986)

* * *

Sanger advised White, copies to Willis and Zigrossi, on White's request for a $40,200 personal services contract with SWEC to review TVA's plans to respond to NRC's section 50.54(f) letter on Watts Bar Nuclear Plant. The advice included: referring to Sanger's February 18 memorandum on the requested $75,150 SWEC contract; the Board's January 3 determinations on the basis that White would act for TVA with respect to then-existing contracts and that the services that Nuclear Power needed from SWEC should be requested under the support services contract; that consistent with applicable law, White should not personally participate by approval, recommendation, or otherwise in any other TVA/SWEC contract matter not covered by the Board's determination; and that because the request for services was actually initiated prior to White becoming the Manager of Nuclear Power, the requested contract could be properly entered into by TVA if handled under the General Manager's direction by persons who had no interest in SWEC. (G-3)

* * *

Sanger and Mason gave Dean, Waters, and Willis a proposed response to Representative Schroeder's February 24 request for TVA's side of the story on White's contracts. A few minor word changes were suggested and agreed upon. (B-14)

3/11/86 The Board and White made a presentation to NRC. Sanger was present and answered questions. At that public meeting, the following exchange occurred:

> COMMISSIONER ROBERTS: To go to your organization chart, the color-coded one, if I can count properly, below or including your position, Mr. White, you have got 24 positions here and eight are contractors or consultants. They are not on the TVA payroll directly. They don't get a U.S. Government check.
>
> MR. WHITE: That's correct.
>
> COMMISSIONER ROBERTS: Has the legality or the permissibility for this scheme been thoroughly confirmed?

MR. WHITE: I will let the lawyers talk about it in a minute, but from my perspective, the contracts under which we entered into this were reviewed by well over a dozen lawyers. They were reviewed by Stone & Webster, and I don't know how many lawyers there. They were reviewed by the top TVA lawyers and they were reviewed by a legal firm that specializes in this kind of thing. So any time you can get more than a dozen lawyers to agree on anything, let me tell you, I feel pretty confident.

COMMISSIONER BERNTHAL: I was about to say that one thing you learn in this business is that a dozen lawyers is worse than a half-dozen.

[Laughter]

MR. WATERS: I can give you the viewpoint of a very fine lawyer, myself.

[Laughter]

MR. WATERS: It is perfectly legal, Mr. Roberts.

CHAIRMAN PALLADINO: Did you want the general counsel to respond?

MR. WHITE: I don't know if he has anything to add.

MR. SANGER: We have looked at this very carefully, of course, and what we are doing here is contracting for work, and we have express authority under Section 9(b) of the TVA Act to do that. While this is an unprecedented kind of thing in terms of placing people in line management positions, TVA has always had these kinds of contracts. I don't have any doubt about their legality, and I have so assured the Board and did so before we entered into this arrangement [NRC March 11, 1986 meeting transcript at 97-99].

3/12/86 Sanger spoke to White by telephone on several matters including telling him that Sanger was sending White the proposed response to Representative Schroeder's February 24 request that included the Board's and General Manager's comments. The proposed response was then sent electronically to White's office and verified. (B-14)

* * *

Sanger advised Willis, with copies for the Board members, of the legal basis for the statements in White's February 14 letter on the inapplicability to White of certain statutes. Sanger provided copies of White's February 14 letter as well as Sanger's proposed response transmitting the agreed-upon letter to White. (A-11)

Willis agreed to White's statement in his February 14 letter. (A-10)

3/13/86 Sanger transmitted to White a copy of White's February 14 letter which Willis had approved March 12 confirming the understanding that White was not and would not be deemed to be an employee or in other categories for certain purposes. Sanger confirmed White's February 7, 1986 statement that he understood Sanger's position as TVA's General Counsel that the financial disclosure requirements of the Ethics in Government Act and section 208 applied to White, Kelly, and others and that on the basis of White's understanding Sanger had agreed to omit a sentence from White's February 14 letter that he understood that TVA may consider him to be an employee for other purposes. (A-10)

3/14/86 Sanger and Mason reported to Willis on the results of Mason's discussions with SWEC (Greer) to develop a Supplement No. 1 to the SWEC loan agreement to establish flat hourly rates for SWEC and STEMAR personnel provided under that agreement. Sanger discussed this with Willis in his office prior to that time and subsequently in a session Willis and Sanger had in Dean's office. Willis approved the proposal and Mason so informed Greer. SWEC (Matson) proposed to Willis a Supplement No. 1 to the SWEC loan agreement to establish flat hourly rates for SWEC and STEMAR personnel (except White) provided under that agreement. (A-12, A-5; M.D. March 14, 1986)

* * *

Referring to his February 10 request for a $40,200 SWEC contract to review TVA's plans on the NRC's section 50.54(f) request, White confirmed to Sanger, copies to Willis and Zigrossi, that he desired "to maintain an 'arms-length'

relationship with SWEC regarding any contracts other than those specifically approved for my involvement by the Board of Directors." Therefore he delegated his authority on this contract, as well as all future SWEC contracts, to C. C. Mason for Mason to deal directly with the General Manager and not to present such SWEC matters to White. (C-2)

* * *

Representative Schroeder asked GAO to look into and report on 13 questions regarding TVA's arrangements for White's services, Zigrossi's compensation, and intimidation and harassment of employees raising nuclear safety issues. (A-6)

3/17/86 White submitted to Sanger his Financial Disclosure Report. (K-28, K-30)

3/18/86 Sanger provided Drotleff, Kelly, Kirkebo, and Huston copies of SWEC counsel's March 7 letter, but advised these loaned employees that the filing of the Financial Disclosure Report was a personal obligation and that all matters on the reports, including requests for extensions, should be handled directly between Sanger as the Designated Agency Ethics Official and each employee. (K-5, K-13, K-16, K-18)

3/19/86 White sent Sanger a proposed revised draft response to Representative Schroeder's February 24 request. Sanger told the Board that the response was very late and of particular items he would change in White's draft. (B-13)

* * *

J. Q. Webber transmitted to OGC a draft request from C. C. Mason to Personnel for a $5 million personal services contract with SWEC for engineering, construction, and operations support services, for a two-year term from February 13, 1986 to January 12, 1988. (H-3)

3/20/86 Drotleff and Kirkebo each requested from Sanger an extension to file Financial Disclosure Reports. (K-2, K-24)

* * *

In a meeting with C. C. Mason, Sanger and Willis asked him to get Power's comments for Sanger on Sanger's February 27, 1986 draft section 208(b) generic determination transmitted to White on that date. (Note on Sanger to White, February 27, 1986)

* * *

Dunn was informed by an ONP employee that he was being directed by a SWEC manager to ignore OGC advice on SWEC contract matters. Sanger subsequently informed the General Manager and Inspector General of this matter. (L-1)

3/21/86 Sanger spoke to Dean, Waters, and Willis about TVA's response to Representative Schroeder's February 24 request for TVA's side of the story and made specific suggestions to address identified issues, starting with the March 12 draft. After trying to reach White by telephone, Sanger sent electronically and verified receipt of this further revised draft. Sanger also gave copies of the draft to John Stewart and Willis. (B-12)

* * *

GAO (Henry R. Wray) asked Dean to provide a report responding to each of Representative Schroeder's questions on the TVA/SWEC/White arrangement and Zigrossi's compensation. (GAO, Wray to Dean, March 21, 1986)

* * *

Referring to Willis' proposed letter to SWEC prepared and reviewed by Sanger, Mason, and others in OGC and responding to SWEC's assertions in Matson's February 28 letter that the Ethics in Government Act was not applicable to SWEC loaned employees, Waters approved the letter but stated to Willis and Sanger, "I don't like the tone but I understand it is necessary." Dean okayed the letter the same day and Willis released it. The letter explained that TVA was firm in its determination that the Financial Disclosure Reports must be filed by loaned employees in covered positions and that the requirement was based on law as well as making good business sense. (A-1, A-2)

* * *

Willis returned to SWEC a fully executed original of Supplement No. 1 to the SWEC loan agreement establishing retroactive to January 3, 1986, flat hourly rates for SWEC and STEMAR personnel (except White) provided under that agreement. (A-3)

* * *

Huston requested from Sanger an extension to file his Financial Disclosure Report. (K-12)

* * *

At Drotleff's request, Sanger returned Drotleff's request for an extension to file his Financial Disclosure Report. (K-3)

* * *

Referring to Sanger's February 18 and March 10 memorandums on previously requested SWEC contracts for work at Watts Bar Nuclear Plant, C. C. Mason requested Personnel to issue two personal service contracts for SWEC's work in the amount of $40,200 for review of translation of design criteria and for $75,150 for review of TVA's plans on NRC's section 50.54(f) request. (G-1)

3/24/86 Sanger telecopied to White's office for his comments the March 21 draft response to Representative Schroeder's February 24 request. (B-12)

* * *

Kelly requested from Sanger an extension to file his Financial Disclosure Report. (K-20)

3/25/86 White sent Sanger a further revised draft to Representative Schroeder's February 24 request. Sanger told the Board he did not think this was an adequate response, but made suggestions in line with others' interests to try to improve it. (B-11)

* * *

C. C. Mason sent Personnel a draft request for a supplement to the SWEC support services contract to increase the contract limit from $6 million to $12 million per year. Copy to OGC. (F-1)

3/26/86 Drotleff resubmitted to Sanger his March 20 request for an extension of time to file his Financial Disclosure Report. (K-2)

3/27/86 Having received ONP's comments on a draft, Sanger sent Willis the generic section 208(b)(2) determination requested by Willis to "be considered by you and the Board in light of our previous advice on the subject." (N, Sanger to Willis, March 27, 1986)

3/27 or 28/86 Having spoken to Willis, Waters, and Dean on many occasions about the risk Sanger thought the Board was running by continuing to leave their section 208 determinations in effect for White and the other SWEC managers, Sanger asked Dean to go to lunch with him to talk to him again about it. Sanger explained again the risk he thought Dean was running

that some zealous prosecutor would conclude that the Board members were involved as accessories in violations of section 208, a Federal criminal felony statute. Dean told Sanger that he had not acted with intent to commit any crime; that he had acted only to do what was necessary to rehabilitate the nuclear program. Sanger explained to Dean that intent was not an element of a violation of section 208. Citing Mississippi Valley, Sanger explained that the statute was aimed at not merely punishing actual corruption but making it a crime to be in a position where a decision could be made involving conflicting private and government interests.

3/31/86 Ken Gray in TVA's Washington Office told Sanger that the Chairman's Office had told him that the response to Representative Schroeder's February 24 request was being sent to him for delivery to Representative Schroeder. Sanger was not shown the letter the Chairman sent to Gray. (B-10)

* * *

Sanger met with Zigrossi and discussed with him the conflicts of interest problems in some detail. Sanger specifically raised with him, Zigrossi's March 10 return of Sanger's and Mason's February 13 files memorandum. Zigrossi said he sent the memorandum back to Sanger because this was a controversial matter in which he was not yet involved. (Sanger's note on Zigrossi's March 10, 1986 45D to Sanger)

* * *

Sanger called White and told him that QTC was willing to work for about 2 more weeks to complete 15 I&H cases that were investigated but uncompleted. Sanger told White that he would not push it if White wanted to do something else, but Sanger wanted White to know that QTC said it could finish 30 I&H reports in 4 weeks and that OGC hated to see that work be thrown away. Sanger told White he saw no reason why he should express any different view from White's view that QTC should not do further work for TVA and that it was not acceptable for QTC as a contractor to state that it would only work for TVA through OGC and not ONP and White agreed that Sanger should work with QTC to finish 15 cases by April 12. Sanger informed QTC and QTC agreed to do so. (M.D. March 31, 1986)

4/1/86 Dean's response to Representative Schroeder's February 24 request was released to her. (B-9)

Sanger asked Dean about the decision to send the letter and why it was not mentioned to Sanger. Dean said he and Waters had decided to take the best of two draft letters and send it. Sanger pointed out to Dean that with the deletion of two paragraphs and minor changes in the introductory language, the letter is the same as the one Sanger and Mason gave the Board and it approved on March 10. (B-10)

* * *

By memorandum Dean requested Sanger to prepare a written opinion for the Board relating to the total legality of the arrangements between TVA, SWEC, and STEMAR. Immediately after receiving that memorandum, Sanger once again told the Board what his advice was. (J-4; M.D. April 1, 1986)

* * *

Sanger, White, Willis and the Board met in Knoxville for White to brief the Board on developments in the QTC contract. (O, Willis to General Manager's files, April 1, 1986)

White told Sanger that Mason was leaking information to publicly embarrass White. Sanger denied that Mason would do such a thing, telling White that Mason had been involved over the years in much of the agency's most sensitive work and nothing had been leaked by him or those he worked with. White cited as proof of Mason being the source of the leaks the enclosure (Exhibit B to the TVA/SWEC loan agreement) to Representative Schroeder's March 14 letter to GAO. White told Sanger that Representative Schroeder's documents came from Mason because the documents had Sanger's marginal notes to Mason on them. Sanger denied that could be the case and told White he would check.

Later that afternoon, after checking with Mason and reviewing the document (A-6), Sanger called White and told him that the notes on Exhibit B were not Sanger's or Mason's distinctive handwritings, but rather that the only thing they could assume was that the notes apparently reflected Simmons' March 5 telephone interview of Mason in which she was trying to follow up Beck's March 5 Journal article. He told him the note read:

> Mason
> One of my obligations
> Keep the confidences of my client
> [next line illegible]

Sanger told White that those notes reflected Mason's responses to Simmons' questions about Mason's advice on SWEC's arrangements.

Sanger told White he could only assume Simmons gave Representative Schroeder the documents Representative Schroeder provided to GAO. (M.D. April 1, 1986)

Sanger then met with White privately to go over White's Financial Disclosure Report. White provided requested additional information. (K-27) Sanger told White the form was complete.

* * *

Sanger approved Kelly's request for an extension to April 29 to file his Financial Disclosure Report. (K-15)

* * *

James B. Hall, an OGC attorney, told Mason he had accepted a job as Assistant to the Inspector General and would be leaving OGC as of April 8. Among various items discussed, Mason told Hall that one difficult issue the Inspector General had to deal with was the section 208 conflict of interest issue that was pointed out in Sanger's and Mason's February 13 files memorandum, a copy of which was sent to the Inspector General. Mason stated his surprise that Zigrossi had not acted already on the matter. Hall told Mason that he would speak to Zigrossi promptly about this as Hall agreed it appeared that Zigrossi needed to take some action.

4/2/86 Sanger and Mason discussed with Willis the generic section 208(b) Federal Register determination.

They also discussed C. C. Mason's March 25 draft request to increase the contract amount from $4 million to $12 million per year under the SWEC support services contract in light of the fact that the Board had made White's, Kelly's, and other SWEC loaned employees' section 208(b) determinations in consideration that the SWEC support services contract would be limited to $4 million per year unless it was increased by the Board on the recommendation of permanent TVA employees without involvement by SWEC employees and based upon the normal competitive process. C. C. Mason's request was for sole source procurement from SWEC. Willis said that rather than the proposed extension, C. C. Mason would request a separate $10 million contract with SWEC to be solely administered by TVA employees without any SWEC loaned employee involvement. The issues involved in transferring

the SWEC QA engineers already at work under the January 3 SWEC support services contract to work under this proposed contract were raised by Sanger and discussed. (F-1; M.D. April 2, 1986)

* * *

Sanger approved Drotleff's and Kirkebo's requests for extensions to April 28 and 30 respectively to file their Financial Disclosure Reports. (K-1, K-23)

4/3/86 Webber for C. C. Mason asked Personnel to issue a $10 million personal services contract with SWEC for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. The request stated that authorization to use this contract will be limited to TVA employees and that all SWEC employees will be prohibited from requesting these services to avoid a conflict of interest. The memorandum also requested authorization to transfer the SWEC employees currently performing services under the support services contract to this requested contract, "recognizing that those personnel involved may have been recommended by SWEC loaned employees and authorized by Mr. White or myself." (H-1)

4/4/86 White told Dean and Waters, copies to Sanger and Willis, in disagreeing with Dean's April 1 letter to Representative Schroeder, that "the manner in which this reply was generated was unsatisfactory." (S, White to Dean and Waters, April 4, 1986)

4/7/86 George Dilworth and John Fenton of Nuclear Engineering and J. M. Gross and Nina Stoner of Personnel met with Osteen, Mason, and Smith. Dilworth recounted that he was on a task force to handle the engineering and installation of needed modification work at Browns Ferry Nuclear Plant for restart in 1988. He said TVA had 600 TVA and contractor employees at work on Unit 2 and that TVA did not have any additional engineering or installation resources to assign to that work on Units 3 and 1. Therefore, ONP wanted to contract the work out. A problem discussed was that two of the three contractors ONP thought could do the work were SWEC and Bechtel. White and Drotleff, both in the chain of command on engineering matters, had interests in SWEC. On the installation aspect of the contract, McCullough, the Manager of Nuclear Construction, was a Bechtel employee. Dilworth asked for advice on the conflict and procurement issues involved. OGC agreed to respond the next day. (M.D. April 7, 1986)

4/8/86 Representative Flippo inquired, for the third time, when TVA would respond to his February 18 and March 7 letters. (B-8)

* * *

After discussing the matter with Sanger, Osteen and Mason met with Dilworth and others on possible contract arrangements for modification work at Browns Ferry. Mason first advised that no determination about limiting the prospective bidders should be begun until it is assured that no one participating in the process has a financial interest in any possible contractor. He also stated OGC's advice that the maximum competition that can be obtained may be helpful on questions about conflicts of interest and TVA's business judgment, and then recommended that TVA seek proposals from three or more firms. (P, April 8, 1986 Discussion Outline)

* * *

Sanger, Osteen, and Mason met with Willis to discuss the several loan agreements White wanted with Bechtel, GE, MAC, and others. Osteen said that White wanted to include in the agreements provision for requesting services of contractor personnel not in line positions. They also discussed the difficulty of administering the additional SWEC personal services contract in a manner that excluded SWEC persons in line TVA jobs from participating in it. They also discussed the generic section 208(b)(2) determination and that Willis was going to suggest the Board act on it at its next Board meeting.

4/9/86 Sanger approved Huston's request for an extension to April 28 to file his Financial Disclosure Report. (K-11)

* * *

Willis sent the Board a copy and asked it to include on the agenda for its next meeting the section 208 generic determination. (Willis to Board, April 9, 1986) The same day Waters wrote back to Willis "Under no circumstances do I want this sent to Federal Register until question of potential criminal liability is resolved to Bd and GM satisfaction" (emphasis in original). (Waters' handwritten April 9, 1986 note, id.)

4/10/86 Willis gave Mason White's additional comments on the proposed section 208 generic determination.

4/11/86 OGC subsequently received a June 5 memorandum from Willis that recorded that the Board, Willis, and White discussed and White agreed to curtail loaned employees' ordering services for TVA from their respective companies. (S Supp., Willis to Board, June 5, 1986 memorandum)

4/12/86 On QTC's last day of work, it delivered 21 I&H files on which it had completed work since March 31, 1986. (OGC status sheet on receipt of QTC records; I&H status report)

4/14/86 Personnel requested OGC approval of a $10 million personal services contract with SWEC for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. (H-1)

* * *

Sanger transmitted to Willis the proposed generic section 208(b)(2) determination reflecting ONP changes to March 27 draft. (Sanger to Willis, April 14, 1986)

4/15/86 In responding to Representative Schroeder's questions to GAO, Dean transmitted to GAO Sanger's memorandum on the propriety of TVA contracting for personal services to enhance its nuclear power program. (B-3)

* * *

Mason approved for legal effect the proposed $10 million personal services contract for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. (H-1)

4/17/86 Thompson recommended to the General Manager that the Board approve a $10 million personal services contract with SWEC for engineering, construction, and operations support services, for an approximate two-year term from April 7, 1986 to January 12, 1988. The services to be provided when and as requested by the Deputy Manager of Nuclear Power. (H-2)

* * *

Huston submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-38)

* * *

Bjorkman asked Mason for copies of the Board's section 208(b) determinations on Kelly, Drotleff, Huston, and Kirkebo. (M.D. April 17, 1986)

4/18/86 At its public meeting, the Board approved the $10 million personal services contract with SWEC for engineering, construction, and operations support services, to be provided when and as requested by the Deputy Manager of Nuclear Power. (E-12)

4/22/86 OGC received GAO's request for answers to eight follow-up questions and certain documents in regard to Representative Schroeder's questions. (B-1)

4/23/86 TVA's April 15 response to GAO on Representative Schroeder's questions was provided to about 50 interested congressmen. (D-5)

* * *

Drotleff submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-39)

* * *

Sanger initally understood White was having his office prepare responses to the additional questions GAO asked on Representative Schroeder's questions on the TVA/SWEC/White arrangements and Zigrossi's compensation. Sanger spoke to White by phone.

Sanger informed Willis, copy to White, of the additional questions asked and documents requested by GAO in connection with Representative Schroeder's questions. Sanger told Willis OGC would draft responses and obtain White's views and that White understood this was the proper manner of handling the request. (D Supp., Sanger to Willis, April 23, 1986; M.D. April 23, 1986)

4/24/86 Kelly submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-40)

* * *

Orem called and asked to meet with Sanger. (M.D. April 24, 1986)

4/28/86 Waters asked Lewis E. Wallace, Deputy General Counsel, about the status of OGC's work on the section 208 question in response to Dean's April 1 memorandum. (M.D. April 28, 1986)

4/29/86 After notifying or attempting to notify each affected person, OGC provided the Information Office with the available Financial Disclosure Reports requested on April 25 by Libby Wann. (K-37)

* * *

Sanger sent White and Zigrossi draft proposed answers to GAO's April 22, 1986 additional questions regarding Representative Schroeder's questions. (D-4; D Supp.; Sange to White, April 29, 1986)

4/30/86 Kirkebo submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-36)

* * *

Willis met with Webber for two hours on matters involving the administration of ONP personal services contracts and employee loan agreements, including Webber's uneasiness about rates of pay and possible conflict of interest situations. Willis told Webber to call him if he had questions or concerns.

After Willis left, Webber was called to John Krummel's office and questioned by Krummel, a SWEC employee who at the time was a contractor, but who was designated as a loaned employee, about Webber's meeting with Willis. Krummel asked Webber three or four times "do you know who your boss is?" or "do you know who you are working for?" Webber answered "yes, TVA." Webber told Krummel that he understood the chain of command and that Willis outranked everyone in ONP and that he would follow instructions Willis gave. Webber understood Krummel was instructing him not to discuss ONP business with Willis. (Smith to Sanger, June 13, 1986)

5/1/86 (approx.) Willis saw Webber in the vicinity of White's offices in Chattanooga and briefly discussed contract matters. Almost immediately after that discussion, Krummel questioned Webber about the encounter, including Krummel commenting that Webber was on a first-name basis with Willis. (Smith to Sanger, June 13, 1986)

5/5/86 Referring to his February 13 written advice, Sanger responded in writing to the second aspect of Dean's April 1 request for an opinion on the legality of TVA's arrangements with SWEC; that aspect involving the implementation of the arrangements to avoid any possible violation of the conflict of interest statute. (J-1)

5/7/86 GAO (Mike Volpe) asked Mason for the answers to GAO's followup questions on Representative Schroeder's questions about White and Zigrossi's arrangements with TVA. Mason told him they were being reviewed within TVA. Volpe said Feinstein of Representative Schroeder's staff wanted a status report from GAO. (M.D. May 7, 1986; D Supp. Mason to Sanger, May 7, 1986)

* * *

Sanger re-sent to White OGC's proposed response to GAO's April 22 additional questions regarding Representative Schroeder's questions on TVA's arrangements for White's and Zigrossi's services. (D Supp., OGC Wang transmittal from White, May 7, 1986)

5/6-18/86 The Board discussed Sanger's May 5 memorandum with Howard Baker. Baker told the Board that they had a problem and needed to obtain independent counsel. He told them that they should not go to any prominent Republican firm; that they needed advice that would not be discounted as political.

The Board engaged Robert Strauss, Akin, Gump & Strauss of Dallas and Washington, as the Board's independent counsel. The Board gave Strauss Sanger's May 5 memorandum.

5/8/86 Robert Yates, Comptroller, and two of his staff, Doug Hulme and Ed Hickman, met with Mason to go over SWEC's first invoice under the support services contract. All agreed that SWEC needed to provide more information to support its billing and the Comptroller undertook to obtain it. (D-2; M.D. May 8, 1986)

* * *

GAO (Volpe) told Mason that Senators Sasser and Gore had asked to see GAO's response to Representative Schroeder and that GAO would be providing it to them. (M.D. May 8, 1986)

* * *

White told the Board he had not previously been informed of or seen the Board's February 13 section 208(b) determinations on Kelly, Drotleff, Huston, and Kirkebo and asked the Board to clarify the limitations that are indicated in blank in those documents. (S, White to Board, May 8, 1986)

5/9/86 Dean and Waters told Willis that the Board had determined that the February 13 section 208(b) determinations as to Kelly, Drotleff, Huston, and Kirkebo should be withdrawn. The memorandum states "Steve White has advised us that no authority was ever exercised by virtue of these determinations." (M-7)

* * *

Dean provided GAO with answers to the April 22 followup questions on Representative Schroeder's questions about the TVA/SWEC/White arrangements and Zigrossi's compensation. (M-1; D Supp., Dean to Wray, May 9 1986)

* * *

Orem and a SWEC outside counsel from Ropes-Gray, a Boston firm, met with Sanger in Knoxville. They discussed SWEC loaned employees filing Financial Disclosure Reports. SWEC contended that the Costner case stood for the proposition that SWEC loan employees were not employees for purposes of the Ethics Act. Costner involved an employee of a private company providing services to the Air Force and his subsequent claim that those years of service should be counted toward a Civil Service Retirement pension. The Court of Claims rejected the contention on the basis that the contract employee did not meet the critical element of being "appointed" to a Federal position as required by the definition of employee for the retirement law. Here, however, the Ethics Act relies on the common law definition of employee and White and others are clearly within those definitions for Ethics Act purposes. (Costner v. United States, 665 F.2d 1016 (Ct. Cl. 1981))

On the section 208 questions, SWEC counsel told Sanger SWEC wanted to provide a service to TVA to solve its problems. SWEC said that its company reputation is at stake when it takes a job and that it does not want to collect money for a job without providing a meaningful service to TVA.

SWEC counsel said SWEC cannot help TVA unless SWEC loaned employees can make decisions on using other SWEC people. They agreed that it was inappropriate for SWEC loaned employees to make independent, unrestrained decisions about bringing in other people, but thought that it was foollish for SWEC people not to have some strong involvement in the selection process.

SWEC counsel said his sense was that the conflict problem was handled by some system of checks and balances (e.g., budget control such as TVA has was suggested as one device). Another aspect suggested was some type of approvals (e.g., SWEC considered White part of the check and balance and Willis as another). (Sanger's handwritten note; M.D. May 9, 1986)

* * *

The Board, Willis, Sanger, and White met and discussed Sanger's May 5 memorandum. Sanger told the Board that he thought they had to act promptly to resolve the conflicts. He said if they previously could have argued that they did not understand the law, after May 5 they could no longer argue that. He said that the last paragaph of the May 5 memorandum gave his views on how to resolve the conflict by preventing anyone with an interest in a contractor from dealing with that contractor for TVA. White asked Sanger if limiting STEMAR's markup on BETA personnel supplied to TVA would help; he said he had previously told the Board and Sanger that the markup was running at no more than 2 percent and that it only covered administrative and handling expenses, not profit to STEMAR. Dean told Sanger that he had accused Dean of a crime in his May 5 memorandum. Sanger said that was not what the memorandum said. At the end of the meeting Sanger agreed to consider the conflicts and respond on what the Board could do to resolve them. Sanger reported on his meeting with SWEC counsel. (M.D. May 9, 1986)

5/10/86 Without informing OGC, White gave orders to ONP managers that "freezes additional personnel [being] brought aboard from the major nuclear contractors," pending resolution of conflict issues. (White to Dean and Waters, June 16, 1986 memorandum)

5/12/86 At a working session with the Board and Willis, as requested, Sanger presented a rough draft paper he and Mason had prepared since Sanger's meeting with the Board and White on Friday, May 9, 1986, on "Prospective Remedying of SAW's Conflicting Positions," including a sketch illustrating the present TVA/SWEC/STEMAR/BETA arrangement and one of an arrangement that eliminated the conflicts.

Waters said he understood from the sketch what the problem was and that Sanger should try to implement the suggested solution which involved TVA contracting directly with STEMAR instead of through SWEC. Dean agreed. The Board directed that Sanger was to call White and describe the proposal to him.

Dean again told Sanger that Sanger had accused Dean of a crime in his May 5 memorandum. Sanger discussed the lawyer's obligation to fully inform his client of all possible legal outcomes and that the discussion of Board members' potential criminal liability was in that vein, not as an accusation. Sanger urged the Board members and Willis that any uncertainty they might have had about a lack of understanding as to his advice was over on May 5 when Sanger delivered his memorandum and that their failure to act to resolve the conflict after May 5 carried with it an increasing risk of more and more serious reactions. (S, draft paper "Prospective Remedying of SAW's Conflicting Positions"; M.D. May 12, 1986)

After the meeting Sanger called White as directed. White was not available and did not return Sanger's call until Thursday when Sanger was at the Sixth Circuit Judicial Conference in Memphis.

* * *

Dean and Waters provided Zigrossi with Sanger's May 5 memorandum and asked Zigrossi to take whatever action he considers indicated. (M-5, M-6)

5/13/86 Sanger and Mason discussed with Willis the advice they would give the Board on White's proposals of May 9. They discussed a draft memorandum on that subject. (M-8)

* * *

White sent letter to Willis clarifying SWEC arrangements. (M-9)

5/14/86 The Board, Willis, and Mason went to Chattanooga to continue preparing for the Dingell hearing. In route Mason gave Willis and the Board the draft memorandums from the Board to White which he and Sanger had prepared following up on Sanger's May 12 meeting with the Board at which the Board agreed that Sanger should try to implement his proposal. Under the draft memorandum TVA would have contracted directly with STEMAR for White's services and White would have had no interests in SWEC. (S, Board to White draft, May 14, 1986)

After the Board and Willis met with White in Chattanooga, Willis gave Mason White's May 13 letter to Willis in which White confirmed that STEMAR's markup of STEMAR personnel to TVA currently running at less than 2 percent does not include any profit and that STEMAR is not and will not, without TVA Board approval, do any other business with SWEC. (M-9)

Willis told Mason that White had told him and the Board that unless this conflict of interest issue was cleared up by the next day, May 15, White would have no choice but to go back to the farm and take no further TVA action until the issue was resolved; White told the Board he would not go to Representative Dingell's hearings on TVA, then scheduled for May 21, until this was resolved. Willis also told Mason that Kelly was informed of Sanger's May 5 section 208 opinion and that, according to White, Kelly had told White that morning that he was not going to be accused of a crime and continue working for TVA and that Kelly would have left but for White persuading him to stay until the Board had a chance to work this out.

Mason told Willis his opinion that White's May 13 representations did not address the heart of the conflict issue because White would continue to order for TVA from SWEC and STEMAR, companies in which he had substantial interests. Willis said that White had told the Board that he could not accept Sanger's proposed restructuring of the contracts because SWEC indemnified White against losses incurred in his TVA work and that he would lose that indemnity if he did not contract through SWEC. Mason told Willis that was a financial interest in SWEC that White had not previously disclosed.

Willis told Mason that they should call Sanger, who was attending the Sixth Circuit Judicial Conference in Memphis on May 14-17. Mason and Willis spoke to Sanger and gave him the above circumstances. Sanger advised Willis that White's May 13 letter did not resolve Sanger's concerns about the conflict of interest problem raised by White's direct involvement in procurement of services for TVA from SWEC and others in whom White has interests. (Sanger to White, May 27, 1986) Willis told Sanger and Mason that White was writing a letter to Sanger. Sanger told Willis that Mason would bring White's letter to him in Memphis and that Sanger would respond. Willis informed the Board and White of Sanger's views.

When Willis left to give the Board and White Sanger's views, Mason and Sanger discussed other options, including the possibility of the Board suggesting to White that OGC speak directly to White's tax and indemnification advisors about the essential points of TVA's interests and of White's tax and liability interests to see if there was some mutually acceptable common ground; and the possibility that the Board consider insisting on nonconflicting contract arrangement, but agree for TVA to indemnify White and make him whole on

any adverse tax consequences caused by the restructuring. Mason mentioned those items to Willis who thought they could be useful. Mason subsequently mentioned them to Waters who responded that TVA agreed with White in the January 2 negotiations on these contract arrangements and that White refused to change them now. He said he thought White made a good point when he (White) said that a change in the contracts now would raise more questions than would be resolved.

When White's May 14 letter to Sanger was available, Mason took it to Sanger in Memphis. White's letter informed Sanger of White's May 13 letter to Willis on STEMAR's markup and STEMAR's determination not to do other business with SWEC without TVA Board approval. In the letter, White asked Sanger to give him an opinion by May 15 that these actions resolved all of Sanger's concerns for conflicts of interest in White's arrangements with TVA. (M-4; J Supp.; M-9)

* * *

Sanger sent White a package of material on conduct, ethics, and conflicts of interest for distribution to loaned employees assuming TVA line jobs. (T, Sanger to White, May 14, 1986)

5/15/86 Sanger called Willis. Sanger told Willis that White's May 13 and 14 letters did not resolve Sanger's concerns on the conflict of interest problems raised by White's procurement for TVA of services from SWEC and STEMAR. Sanger told Willis that his and Mason's original advice was still their view; that White could not act for TVA on SWEC and STEMAR orders while he had the substantial interests he held in SWEC and STEMAR. Sanger referred to the May 12 draft memorandum from the Board to White as indicating one way to fully resolve the matter, but said that other resolutions might be equally satisfactory and that if someone else had an idea, Sanger and Mason would want to consider it. Willis asked what Sanger's advice would be to the Board if the Board wanted to go ahead on the basis on White's May 13 and 14 letters. Sanger said that his May 5 advice to Dean was that, as the arrangements then stood, the Board's section 208 determination as to White and the others was subject to vulnerability if challenged on review by Congress or the courts and that there was for Board members some minimal risk of prosecution. Sanger said that, although White's May 13 and 14 letters did not address the heart of the conflict issue, they did clear up some relatively more minor points and that to that extent the arrangements if so modified would be improved and their vulnerability to challenge lessened. However, Sanger told Willis that unless

the central conflict issue was addressed, Sanger would not be able to give an unqualified legal opinion on the arrangements. Willis told Sanger he would like Sanger to revise the May 12 draft memorandum from the Board to White to reflect the arrangement White proposed in his May 13 and 14 letters and to prepare a draft of the opinion Sanger would give on that arrangement, so that the Board could have that option laid out in front of them. Sanger agreed to do so.

5/16/86 As Willis requested on May 15, Mason gave Willis a draft memorandum from the Board to White implementing the TVA/SWEC/STEMAR/White arrangements as modified by White's May 13 and 14 letters. Mason also gave Willis a draft qualified legal opinion on the application of section 208 to those arrangements. (M-1)

Subsequently Willis came to Mason's office and told him the Board thought the draft opinion said they "were a little bit pregnant," and that the Board was not satisfied to go ahead on that basis. (M.D. May 16, 1986)

5/19/86 TVA learned that the Dingell hearing originally scheduled for May 21, 1986 was postponed to June 11, 1986.

* * *

Orem and Sanger spoke by phone. Sanger told Orem that Kelly, Drotleff, Huston, and Kirkebo had attempted to submit Financial Disclosure Reports that were not complete as to their SWEC compensation as required by the Ethics Act and under a TVA regulation on confidential filings for other groups of employees that was not applicable to their filings. Sanger told Orem that there was no reason to make a record of reluctant compliance with the disclosure obligations, but that Sanger had an obligation as TVA's Designated Agency Ethics Official to report to the Board and to the Department of Justice on any noncompliance. Orem told Sanger he would let him know on the Financial Disclosure Reports. (M.D. May 19, 1986).

Sanger also pointed out that the Costner case previously cited by SWEC's outside counsel held, as Sanger and Mason had told Bjorkman, Edgar, and Gallen in February, that you can be an employee for purposes of some definitions and not for others.

* * *

The Board and Willis went to Washington. On the way Willis was told the Board had engaged Bob Strauss as independent counsel to advise on the conflict of interest question and that the Board wanted Willis to attend a meeting it had scheduled that afternoon with Strauss.

Strauss told the Board that he had read Sanger's May 5 memorandum and the GAO response and thought they were as fine pieces of legal work as he had ever seen, and he did not think the Board would want his opinion since it was not different than Sanger's. Strauss told the Board they could find 40 lawyers to give them the opposite opinion, but that they would be wrong. He said he did not think anyone would go to jail, but that the Board's General Counsel was right. He said he thought in the worst case the Board "could be indicted within 24 hours." Strauss said the Board could not have picked a worse time to get into this situation, but that he would be willing for his firm to help the Board fully present the facts about the crises the nuclear program was in at the time the Board's section 208 determinations were made so that all would have a full understanding of them, but that he would only take on that work it if was acceptable to Sanger. Strauss said the nuclear problem is not n excuse under section 208, but the enormity of the problem might be seen to ameborate their actions. Willis told Strauss that Sanger was objecting to the SWEC arrangements on conflict of interest grounds from the time he returned to the office on January 6, 1986 and that Mason objected at that time as his notes show.

Strauss agreed that the Board needed to get to work to resolve the issue and that the approach outlined in Sanger's draft May 14 memorandum was appropriate.

The Board members told Strauss they had no intent to violate section 208. Strauss explained that intent is not an element of a violation of section 208.

Strauss was provided, in addition to the May 5 memorandum, OGC's draft memorandum of May 14 on resolving the issue and the April 15 Sanger memorandum responding to GAO's questions on behalf of Representative Schroeder. (M.D. May 20, 1986)

5/20/86 Sanger provided SWEC counsel with copies of the material referred to in the Board's February 13 section 208 determinations as to Kelly, Drotleff, Kirkebo, and Huston. He also notified SWEC counsel that the Board had decided that those determinations should be withdrawn and not relied on for any purpose. (D Supp., Sanger to Bjorkman, May 20, 1986)

* * *

The Board was still in Washington, but Willis was in Knoxville. | Willis told Sanger about the Board's discussion with Baker and its engagement of Strauss; he related the meeting with Strauss and said Strauss would call Sanger. Sanger told Willis that, since this was the first Sanger knew about Strauss or the meeting, Sanger would not talk to Strauss before the Board had a chance to inform Sanger of circumstances and what the Board expected Strauss to do. Strauss subsequently called Sanger while he was attending to other business. Sanger asked Willis to call Strauss and tell him that Sanger could not speak to him until Sanger had spoken to the Board. Willis did so. Strauss told Willis that he fully understood and agreed with Sanger's position and that he would wait. When Willis spoke to Strauss, Strauss told him that Strauss could possibly best help the Board on the Hill. When Willis told Sanger that, Sanger pointed out the lobbying prohibition applicable to TVA. (M.D. May 20, 1986)

5/21/86 GAO (Volpe) told Mason GAO met with Representative Schroeder's staff (Feinstein) on May 16 and that from that meeting GAO had decided to send some auditors to TVA to verify some of TVA's answers to the questions. GAO said they had another meeting with the staff scheduled for May 23. In addition to a question about Zigrossi's transfer reimbursements, GAO asked TVA to explain precisely the conflict of interest as to White that the Board deemed was insubstantial. Sanger informed Willis of this call. (D Supp., Sanger to Willis, May 21, 1986)

* * *

The Board told Sanger about their meeting with Strauss. Dean and Waters told Sanger that Strauss thought Sanger's May 5 memorandum was correct. The Board asked Sanger to talk to Strauss. Sanger told the Board he would but that he did not understand what Strauss was to do. The Board members agreed that they were not clear themselves on precisely how Strauss would be able to help on the issues. Sanger told the Board. this is a TVA problem that needed to be handled by TVA. He said the problem was ripe for resolution and, although there might be excuses made for past errors, there would be no excuses after the Board heard its independent counsel confirm Sanger's advice. Sanger again urged the Board to restructure the contracts as discussed in the May 12 and May 14 draft memorandums. Dean told Sanger "but you haven't told me I'm clear of any criminal charges." Sanger explained that the restructuring would put TVA on the right basis for the future and prevent new violations from occurring.

Sanger, the Board, and Willis discussed the pros and cons of outside counsel. Waters' point was that this section 208 problem was caused by the lawyers' ego and some view they had of their turf.

The Board gave Sanger a draft copy of the proposed engagement letter from Strauss's firm. Sanger told the Board he could not pass on the letter (and eventually returned it to Willis). Sanger asked the Board if it had engaged Strauss as individuals or if the firm was engaged by the Board in its official capacity. TVA could not pay for the legal services if to an individual. The Board said the Strauss firm was engaged by the Board in its official capacity. (M.D. May 22, 1986)

* * *

The Division of Nuclear Engineering prepared a briefing paper on Principal Personal Service Contracts for Architect-Engineering Services describing three A-E contracts it needed for Browns Ferry, Watts Bar, and Sequoyah, totalling $157 million. The paper proposed that proposals be solicited from five firms: Bechtel, SWEC, Ebasco, Sargant Lundy, and United Engineers and that no unsolicited proposals be considered. The attached draft solicitation was prepared for Drotleff's signature, but the paper proposed that only TVA employees would be involved in the selection of the contractor. The principals on the committee worked under White and Drotleff. (ref: "Principal Personal Services Contracts for Architect-Engineering Services")

5/22/86 White wrote to Sanger taking issue with parts of Sanger's and Mason's February 13 files note on the discussions leading up to the Board's February 13 section 208 determinations on Drotleff, Kelly, Kirkebo, and Huston. (S, White to Sanger, May 22, 1986)

* * *

Orem called Sanger to tell him that all SWEC loaned employees will fill out the Financial Disclosure Reports in compliance with the Ethics Act and that they would not claim the reports were filed in confidence. Sanger told Orem that in that event TVA would not have to refer the forms to the Department of Justice.

Sanger told Orem that OGC originally proposed a solution to White's section 208 conflict and that he was proposing it again. He said he knew about White's tax considerations, but no one else had proposed any solution. Orem responded that, on his side, they did not all have the same view and that

Sanger's proposal would be acceptable to some of them. Orem proposed that he and Matson would be willing to sit down with Sanger and Willis to see if some solution could be obtained. Sanger answered that White and his counsel should be included, but that he would check with Willis. (M.D. May 22, 1986)

* * *

Sanger spoke to Strauss. Strauss recounted his May 19 meeting with the Board. He told Sanger he began the meeting by saying "there are very serious questions raised." He said that when he first heard of the Board's problem, he thought the firm might be able to write some comfort letter, but having read Sanger's work he thought it was the best legal work he had seen; he said they would look some more, but that he did not disagree with Sanger; and that there could not be a comfort letter.

Strauss told Sanger that a condition of Strauss working for the Board was that Sanger agree to work with him. He said that before he made any determination, he was going to talk with both Sanger and the Inspector General. He said his tentative inclination was to work with TVA as special counsel with his firm: putting the Board determination in the context of the nuclear management crisis and advising on how to manage Representatives Dingell and Schroeder. He said his tone would be that those involved were a group of honorable men who may have engaged in excesses. Sanger reminded Strauss of applicable lobbying prohibitions.

Sanger told Strauss that he could see some positive and negative aspects of special counsel. Strauss agreed. Sanger said that he was telling the Board he would not hire special counsel and Strauss agreed that was a proper view, although he said as it worked out, he thought his involvement would be more beneficial to the General Counsel than anyone else.

Sanger told Strauss his view that whatever had gone before, the Board absolutely understood the problem now and that it was essential that the Board act to resolve the issue. He acknowledged that a solution that was not acceptable in the original negotiations might still be unacceptable.

Strauss suggested that his partners Langdon and Daniel Joseph come to Knoxville to talk to Sanger. (M.D. May 22, 1986)

* * *

Strauss called Sanger a second time. They again discussed the lobbying prohibitions and the criminal law issues on accessory and aiding and abetting. Sanger told Strauss that, as he said in the May 5 memorandum, he did not think there was any real possibility of an indictment under section 208 in these circumstances although a zealous prosecutor might try it. Sanger again urged Strauss to use his offices to the extent he thought proper to counsel the Board to make some immediate correcting decision for future actions. Strauss told Sanger that White's lawyer needed to be more flexible. (M.D. May 22, 1986)

5/23/86 After telling the Board and Willis that he was required to do so, Sanger sent the May 5 memorandum to the Office of Government Ethics as required by OGE regulations. (J Supp., Sanger to Martin, May 23, 1986)

* * *

Langdon and Joseph from Strauss' firm met with Sanger. After covering TVA's background and the context of the section 208 issue, they told Sanger the firm really was not interested in the conflict issue or any legal issue. They said we cannot imagine we would have any different light (e.g., by explaining the consequent loss of managers from the pay cap). Sanger emphasized to Langdon and Joseph that TVA needed to act to prevent future occurrences of the conflicts. The lawyers explicitly declined to be involved in the structuring of any new arrangements, explaining that as independent counsel, they had to be removed from those discussions. (M.D. May 23, 1986)

* * *

Orem called Sanger. Sanger agreed that OGC would return the improperly completed and conditioned Financial Disclosure Reports to the SWEC loaned managers for proper completion and filing and told him that he and Willis were favorable to his proposed talk about resolutions. They again discussed the need to include White and Edgar. (M.D. May 23, 1986)

(approx.) SWEC counsel (Orem) delivered to Sanger proposed revisions to OGC's May 16 draft memorandum from the Board to White on necessary modifications to the existing arrangements. (S, Draft memorandum labelled "To Steve White only" and "Orem delivered to HSS 5/23/86")

5/27/86 Sanger confirmed to White, copies to Willis and Zigrossi, Sanger's May 13 and 14 advice to Willis that White's May 13 proposal on modifying his arrangements did not resolve Sanger's concerns about the conflict of interest problem

raised by White's direct involvement in procurement of services for TVA from SWEC and others in whom White has interests. (J Supp., Sanger to White, May 27, 1986)

* * *

Sanger met with Strauss and his partner Feld in Dallas. Sanger again urged that since no one had any disagreement about the conflict and the Board had no basis for saying it did not know about it now, that TVA needed to act to resolve it immediately. Strauss did not disagree with Sanger's legal conclusions. He described his role using his credibility on the Hill to explain the problems with the nuclear program that led to the Board's decision to contract with SWEC. After the meeting, Sanger made a brief telephone report to Willis on the meeting. Strauss had called Dean on the same subject. (M.D. May 27, 1986)

* * *

TVA's Nuclear Engineering Dispatch reported that F. E. DiCola, SWEC's Manager of Plant Services, was assuming, effective immediately, the duties of Manager of TVA's Operations Engineering Services. (M-10) The responsibilities of the position include "authority to obtain by hiring or establishing contracts for these resources within established TVA policies." (Nuclear Engineering Dispatch, May 27, 1986; Responsibility and Accountability Profile for Manager, Operations Engineering Services approved by Drotleff, April 22, 1986)

5/28/86 SWEC counsel informed Sanger, copies to Dean, Waters, Willis, and White, that in reliance on the Board's February 13 section 208 determinations, Kelly, Drotleff, Kirkebo, and Huston had acted for TVA, including the selection of additional SWEC personnel for TVA's work. (S, Bjorkman to Sanger, May 28, 1986)

* * *

Sanger reported to the Board and General Manager on his May 27 meeting with Strauss, including Sanger's view that the Board needed to now act promptly to resolve the issues everyone agreed existed. Waters told Sanger that he did not want to make the same proposal to White; that "we'll irritate him." At the same meeting Waters said "Hugh Parris didn't know what he was doing and I'll debate that with anyone." (M.D. May 28 and 29, 1986)

* * *

Sanger spoke to White about a time for a meeting among Sanger, Willis, Orem, Matson, and White. (M.D. May 28, 1986)

5/29/86 GAO (Volpe) told Mason that GAO's General Counsel was to rule on 6 of Representative Schroeder's 13 questions by June 2 and that the remaining questions would be referred to GAO auditors for additional work. (D Supp., Sanger to Willis, May 29, 1986)

* * *

Sanger spoke to Langdon by phone. Sanger told him he had asked Strauss to help urge the Board, SWEC, and White to act on the conflict of interest matter now as to prevent future violations and that White needed to be flexible. Sanger suggested Langdon and Strauss should help do this. Sanger told Langdon he did not know what Strauss' firm was doing, but that if Strauss or the firm needed anything from Sanger, that Langdon will have to let Sanger know because Sanger did not know what they might need. Langdon did not ask Sanger for anything. Langdon said to Sanger, "Hell, Herb, we told the Board Sanger's right." He said Strauss told the Board an indictment could be returned within 24 hours. (M.D. May 29, 1986)

5/30/86 Sanger proposed to Willis, copies to White and Zigrossi, that Dean answer GAO's May 21 question on behalf of Representative Schroeder on the precise conflict of interest as to White that the Board deemed was insubstantial, by providing GAO a copy of Sanger's May 5 opinion to Dean. (D Supp., Sanger to Willis, May 30, 1986)

* * *

White's counsel, Edgar and Gallen, spoke to Sanger and Mason about resolutions of the conflict issue. Referring to Sanger's May 27 letter to White, Edgar said if some arrangement was possible that did not involve restructuring the contracts, he thought some agreement might be possible. However, if restructuring was required by TVA to resolve the matter, then Edgar did not see a basis for discussion as it would be much more difficult. Sanger said that the proposal OGC made on restructuring was one arrangement they had thought of, but that there were no doubt others that Sanger would be glad to consider. He told Edgar that TVA needed his help and some flexibility to resolve the conflict. Speaking of the difficulty of an effective recusal arrangement as to SWEC for White as the Manager of Nuclear Power, Sanger suggested that contract restructuring and recusal arrangements be examined. Edgar said they had a draft rough

proposal on a basis for talking about a resolution of the issue, if restructuring was not required. Sanger suggested Edgar send it to Sanger, which was done. (S, Edgar to Sanger, May 30, 1986; M.D. May 30, 1986) This was the same document attached to the revised May 16 draft memorandum that Orem gave Sanger on May 23, 1986 (approximate).

* * *

Sanger met with the Board and Willis. As a result of the discussion, TVA prepared a statement to respond to what Representative Cooper and the newspapers were already reporting as GAO's problems with White's contract. (D Supp., Gray to Sanger/Mason, May 30, 1986; S, TVA's May 30, 1986 release "TVA Firm on Right to Contract")

6/2/86 GAO issued its opinion on 6 of Representative Schroeder's 13 questions, holding that TVA's contract arrangements for White's services were not proper. (D Supp., June 2, GAO to Schroeder)

Zigrossi informed the Tennessee Valley delegation and Dingell that his office was investigating "the legality of [the contracts for White's services] as written; the administration of such contracts; and most specifically, whether potential violations of the Federal conflict of interest laws have occurred;" and that TVA had retained the Akin, Gump & Strauss firm to review these contracts and other contract-related matters that may arise. He informed Congress that the investigation would be completed within 4-6 weeks. (S, Zigrossi's June 2, 1986 letter to the delegation)

6/3/86 Waters told Willis that he thought TVA should prepare a letter answering GAO's question on the precise conflict of interest issue as to White that the Board acted on, rather than using Sanger's May 30, 1986 suggested response using the May 5 memorandum.

Willis told Sanger of Waters' suggestion and Sanger told Willis that he would not participate in any answer that did not fully inform GAO of the issue.

* * *

Senator Gore, who is on the Senate Governmental Affairs Committee with jurisdiction over the Office of Government Ethics, called Sanger and asked about opinions Sanger had given the Board on conflicts of interest involving TVA's arrangements with White. After some discussion, Gore asked Sanger to meet with him on June 4, 1986. That evening Sanger called the Board members' homes to inform them, but did not reach either of them. (M.D. June 3, 1986)

6/4/86 Sanger and Mason met with Gore and his staff. Sanger gave the chronology of events and stated his opinion as he gave it to the Board in his May 5 memorandum. Gore said he thought this conflict of interest was an enormous problem and that he and Senator Sasser would discuss it. Gore said his plan was for him and Sasser to call the Board to correct the matter. (Sanger and Mason to files, June 4, 1986)

6/5/86 Sanger told Dean and Willis (Waters was not available) about his telephone call from and meeting with Gore.

Dean and Willis agreed that Sanger should call White to discuss Sanger's proposal to resolve the conflict issue.

Sanger called White and told him that it appeared that Sanger and White were the only two who could work the conflict out and that Sanger urged White to accept Sanger's proposal on restructuring the contracts as the way to proceed.

That afternoon at about 1:40 pm Waters became available and Willis and Sanger went to Dean's office to meet with Dean and Waters. Dean said "Sasser and Gore are calling at 1:45. We don't have time to discuss anything now, we'll do it later." Sanger and Willis left.

Later in the afternoon Willis talked to Sanger about a memorandum the Board wanted him to send to the Board, with a copy to White, confirming that neither White or any other loaned manager would order any persons from the contractors making their services available, pending resolution of the conflict issues.

About 5 pm Willis called Mason and told him that he had spoken to White about the Board's direction that he confirm that neither White nor any loaned employees were ordering services from the contractors making their services available. He told Mason that when he told that to White, White had said that Willis should assure himself that whatever Willis did was entirely consistent with the Memorandum of Understanding. Willis told Mason he thought White was telling him that White might consider or assert that the Memorandum of Understanding was being breached by this direction. Willis asked Mason for his advice. Mason told Willis that the Memorandum of Understanding made clear that White's services were subject to the reservations and delegations of authority of the General Manager and Board and that the Board could certainly change the delegation of authority as to these contracts at any time. Mason also said that all contracts had to be carried out consistent with Federal law and that these changes to comply with section 208 could not be considered a breach. Mason pointed out that, even in a worst case, the loan agreement is terminable on 60-days' notice. (M.D. June 5, 1986)

Willis then confirmed in writing to the Board, copies to Sanger and White, that White had already curtailed direct ordering prior to that date. (S, Willis to Board, June 5, 1986)

6/6/86 Hall (OIG) called Mason to ask for an explanation of the several TVA/SWEC/White arrangements. (M.D. June 6, 1986)

* * *

Sanger met with the Board and reported on his and Mason's June 4, 1986 meeting with Gore. The Board members recounted their telephone call from Gore and Sasser. The Board said that Gore started in on the problem, but that Sasser got nasty with the Board.

Dean told Sanger "it will be a long time before I forget that you went to see Gore." Sanger told Dean that he was not in any position not to provide a United States Senator with everything he asked for on Sanger's ethics responsibilities for TVA.

Dean, Willis, and Sanger told Waters that after discussing it the day before, Sanger had called White, telling him that the conflict problem had to be handled between the two of them and proposing the contract restructuring solution that Sanger raised in May. Waters got mad; he told Sanger "I don't want you to call White with that solution again." (M.D. June 6, 1986)

6/9/86 Dean told GAO in response to their May 21 question about the precise conflict of interest as to White, that White "is an employee of Stone & Webster and was placed in a position of hiring more Stone & Webster employees. This potential conflict is being investigated by TVA's Inspector General who has access to independent counsel." The letter was prepared and released without Sanger's or Mason's involvement or knowledge. (S, Dean to Wray, June 9, 1986)

* * *

The Board, Willis, Sanger, and White went to Washington to prepare for and attend the Dingell hearing on June 11, 1986. Sanger gave the Board and Willis a draft letter to Representative Schroeder and a copy of his legal memorandum replying to GAO's June 2 opinion. Copies were provided to White at SWEC's Washington Office. Some had comments, some of which were incorporated in the document. (SWEC-Washington Office telecopy, two draft pages of Sanger's June 10 memorandum)

6/10/86 Dean wrote to Schroeder, refusing to acquiesce in GAO's June 2 opinion on TVA's authority to contract for management services on the bases that it was not legally correct or binding on TVA and was not good policy, and enclosing Sanger's legal memorandum replying to GAO's June 2 opinion. (D Supp., Dean to Schroeder, cc GAO and interested congressmen, June 10, 1986)

* * *

OGE (Jane Ley and Gary Davis) called Dunn with a number of background questions and points on Sanger's May 5 memorandum. Sanger informed the Board and Willis of the call including OGE's express concern about continuing violations and Sanger urged the Board again to act to correct the contract structure, rather than allowing the existing conflicting arrangements to continue. (M.D. June 10, 1986)

* * *

The Knoxville Journal (Beck) requested copies of the Financial Disclosure Reports of William Drotleff, John Kirkebo, William Wegner, Richard B. Kelly, R. L. Gridley, and Steven A. White. (Attachment, Sanger to Crowell, June 17, 1986 memorandum)

6/11/86 The Board, Willis, Sanger, White, and Zigrossi appeared before Representative Dingell's Subcommittee.

> Mr. DINGELL. You worked for or now work for Stone & Webster, is that correct?
>
> Mr. WHITE. I worked for, the contractual arrangements right now are through Stone & Webster for my services.
>
> Mr. DINGELL. So you had Stone & Webster, for whom you worked, review this, and you had TVA, for whom you worked, review this, is that correct?
>
> Mr. WHITE. That is correct.

OGE (Ley) attended hearing and spoke to Sanger and Mason at its conclusion. Ley said she agreed with the May 5 memorandum. Sanger told her that TVA was not acting to correct the problem although all agreed that it was one. Sanger said he would continue to urge action be taken to resolve the conflict. Ley said she would review it in OGE and call Sanger. (M.D. June 11, 1986)

* * *

Edgar told Sanger he had a revised version of the May 30, 1986 draft of arrangements he was suggesting on White's behalf to resolve the conflicts. He offered to send it to Sanger. Sanger told him to send it to him and he would consider it and call him. (Edgar has not yet sent any such draft.) (M.D. June 11, 1986)

6/12/86 White told Dean that Dean's June 9 letter to GAO on their May 21 conflict question "could be easily misinterpretated" and strongly urged Dean to allow White to review correspondence which deals with the nuclear program in advance of it being signed out. (S, White to Dean, June 12, 1986)

* * *

White asked Webber about statements he said Sanger had made to the Board in Washington recently that Webber was reporting on ONP personal services contract matters. White asked Webber if White had ever asked Webber "to do anything illegal, immoral, or unethical regarding personal services contracts? Has Krummel? Has Siskin?" Webber told White he had not been asked to do anything illegal or immoral, but that he was directed to process contracts contrary to TVA procedures. White asked Webber who he was talking to in OGC; whether it was Mason or William L. Osteen. Webber said neither, but refused to say who he was talking to. White told Webber if he felt "uncomfortable about anything, come to me." (S, L. W. Smith to Sanger, June 13, 1986)

* * *

GAO (Volpe) called Mason. He said GAO's audit work was to begin in the next few weeks and include further investigation of Representative Schroeder's conflict of interest question. (M.D. June 12, 1986)

6/13/86 Ley and Davis, OGE, called Sanger and Mason. They said OGE agrees with the opinion that White should not take any actions involving SWEC (and likewise for others in similar circumstances). They concurred with Sanger's continuing advice that where there is any question about a waiver, TVA should stop all action now while it is resolved. The OGE lawyers agreed that if the Ethics Act is going to work, OGE has to support Designated Agency Ethics Officials when they are right on ethics questions like this. They said OGE was preparing a letter to TVA on this matter.

Ley said after she spoke to Sanger and Mason at the June 11 Dingell hearing, she also introduced herself to Zigrossi and that she told him "no matter what, the contract employees should not be doing anything for TVA involving their own contract employees."

She also said that Ropes-Gray (the Boston firm that is SWEC's outside counsel) called OGE the day before OGE received Sanger's May 5 memorandum in a "blind call" on behalf of a "large corporation," asking OGE's views on the issues covered

in Sanger's May 5 memorandum. To the extent they could understand the questions, Ley said the questions were answered consistent with the conclusions in Sanger's memorandum. (M.D. June 13, 1986)

6/16/86 White told the Board, copy to Willis, that since May 10, 1986, he had not allowed any additional personnel to be brought aboard from Bechtel, GE, SWEC, and Ebasco pending resolution of the conflict of interest issues, except as White may personally initiate or where involved personnel were approved and inbound when the freeze was imposed. He said one individual was brought in without his authorization after his freeze order. (S, White to Dean and Waters, June 16, 1986)

6/17/86 Sanger responded to White's May 22, 1986 memorandum to Sanger in which White took issue with parts of Sanger's and Mason's February 13, 1986 files memorandum. (S, Sanger to White, June 17, 1986)

* * *

Smith reported his June 12 conversation with Webber about Webber's meeting with White to Taylor and Rathbone of OIG and provided them a copy of Smith's June 13, 1986 memorandum to Sanger. (S, Sanger to Zigrossi, June 17, 1986)

* * *

Willis, W. H. Thompson, Erik Kvaven, Sanger, Osteen, and Mason met at Kvaven's request to discuss ONP's request for Purchasing to negotiate with a limited list of proposers for installation services for Browns Ferry Nuclear Plant. The companion requests for engineering services for Browns Ferry, Watts Bar, and Sequoyah were also discussed. The central problems discussed were (1) proper arrangements for TVA to solicit, evaluate, and award contracts involving contractors who are supplying contract employees as TVA line managers; and (2) proper arrangements for TVA to administer the contracts if they are awarded to such contractors. On the first point, Kvaven described how the task force that was working on the requisition and request for proposals did not include any contractor employee, but that some on the task force worked under contract managers with interests in SWEC or Bechtel. Kvaven said that he understood that, as a matter of protocol, White was expecting to be shown the list of potential suppliers. Willis said that Bechtel and SWEC were the contractors viewed as most capable of doing the installation work at Browns Ferry, although he acknowledged that other contractors could do the work.

The discussion included that White, heading all of ONP, had an interest in SWEC; that Drotleff who headed Nuclear Engineering was also a SWEC employee; and that MuCullough, the Manager of Nuclear Construction, was from Bechtel, as was the newly appointed Browns Ferry Nuclear Plant Site Director.

Thompson proposed that TVA could contract with the same managers as advisors to TVA employees filing the line management positions. He went so far as to say that the employees could be given to understand that they were to do what these managers advised. Sanger and Mason both objected that whatever divestiture or recusal arrangement was established, it had to be substantive and that no more sham would be acceptable. Sanger said, "we have to have a person making the decisions whose sole alliance is to TVA."

Kvaven recounted that two days after Derek Smith, the Purchasing Agent on this assignment began his work on the requisition, he got a call from SWEC asking about the request for proposals and when it would be ready for review.

Willis asked for Sanger's views on a number of alternatives, including having Thompson requisition, evaluate, and award the contracts independent of ONP (this did not solve the contract administration problem); contract the work out entirely; and otherwise.

At the conclusion of the meeting, Willis said he would consider his alternatives and get back to the others on his views. (M.D. June 17 1986)

* * *

Zigrossi wrote to Langdon at the Strauss firm, copies to the Board, Willis, and White but not Sanger, telling him

> you should also consider whether TVA should revise these arrangements in order to prevent any violations of section 208 from continuing or occurring. If you are persuaded that such violations are occurring, please inform us immediately and provide us with your recommendations on how TVA should address and resolve such problems including, if you think it is necessary, proposed restructuring of these arrangements.
>
> . . . please feel free to call me or James B. Hall, my legal counsel . . . [S. Zigrossi to Langdon, June 17, 1986].

6/19/86 GE (G. A. Roupe) confirmed to Willis certain information on financial interests GE employees have in connection with the services GE is providing to TVA pursuant to the TVA/GE loaned employee agreement. (Roupe to Willis, June 19, 1986)

6/20/86 David H. Martin, Director of the Office of Government Ethics, called Dean. Dean told him that Willis had issued in April a written direction that contract employees cease taking all official actions affecting their private employers and offered to send that document to OGE. Dean did not tell Sanger or Mason of that call. (Martin to Dean, June 23, 1986)

* * *

Sanger requested DiCola to complete a Financial Disclosure Report. (Sanger to DiCola, June 20, 1986)

6/21/86 W. David Hall, Assistant to the Manager of Nuclear Engineering, sent Smith for review and comment a draft request for proposals for principal personal service contracts for Browns Ferry Units 1 and 3, Watts Bar, and Sequoyah Nuclear Plants. The draft, which was proposed to be sent only to Bechtel, Ebasco, Sargent and Lundy, SWEC, and United Engineers, asked for proposals for up to 1.3 million manhours of architect-engineering services for Browns Ferry, 700,000 to 1,000,000 manhours for Watts Bar, and 150,000 to 200,000 manhours for Sequoyah for a two-year period. (Hall to Smith, June 21, 1986)

6/23/86 Martin of OGE told Dean, copies to Sanger and Zigrossi, that OGE agreed with Sanger's analysis of section 208 and that it is imperative that loaned managers' participation for TVA in any matter in which their private employers have a financial interest should immediately cease. Martin told Dean that OGE had authority to order corrective action by TVA. (Martin to Dean, June 23, 1986)

* * *

Following up on the June 17, 1986 discussion on contracting for design and installation work with SWEC or Bechtel, Willis asked Sanger for his views on a draft memorandum from him to Sanger asking for Sanger's advice on a memorandum that during the pendency of the Inspector General's investigation would allow contractor employees to supervise for TVA other contract employees (who were brought to TVA by persons with no interest in the contractor) and to give their views to the TVA person responsible for contractor employee selection about contractor personnel to be selected. Sanger and Mason discussed the memorandum and agreed it did not wholly resolve

the conflict. The draft said "I am convinced . . . to our power program." [quote last paragraph] Sanger spoke to Willis about the memorandum. It has not been sent to Sanger in final. (Draft, Willis to Sanger, June 23, 1986)

* * *

OGC received from the General Manager's office a copy of Zigrossi's June 17 letter to Langdon. (S, Zigrossi to Langdon, June 17, 1986)

6/24/86 Sanger spoke to Dean about Dean's June 9, 1986 letter to GAO, telling him that it was not accurate as to White's status or the conflict issues involving White and suggested that Dean supplement that letter to make it correct. Dean told Sanger that GAO had the contracts and he was not going to write further to GAO. (S, Sanger to files, note on draft memorandum Sanger to Dean, June 24, 1986)

At the same time, Dean told Sanger he had received OGE's June 23 letter and asked Sanger what he thought of it. Sanger told Dean he thought it was a significant letter that TVA needed to respond to. Dean said since TVA already had engaged the Strauss firm and Zigrossi was investigating and those efforts would be done in a few weeks, he did not think TVA needed to do anything more.

Sanger told Dean and Willis that Martin had asked him to meet with Martin on June 25, 1986.

6/25/86 Sanger and Mason met with OGE, including Martin, Ley, Davis and Donald Campbell and provided them with background and requested documents. Martin said he thought the entire matter needed to be reported to the Department of Justice as there appeared to have been violations of section 208 and that unless the Board ceased all participation by loaned employees in all matters involving their private employers, there were on-going violations. Sanger explained that the authority on behalf of TVA to report evidence of possible criminal violations to the Justice Department and that Zigrossi had been given both Sanger's and Mason's February 13 files memorandum (which he returned to Sanger) and Sanger's May 5 memorandum. Sanger told Martin of his urging the Board and White to take corrective action to stop future violations and the Board's consistent answer that the matter was being looked at by Zigrossi and Strauss. Martin said that a referral of such a problem to others separate from Designated Agency Ethics Officials who raised difficult issues, particularly those involving their own agency heads, was something he commonly saw in Washington and that, of course, with the

referral of this issue to Zigrossi and independent counsel the Board had cut Sanger out of the picture. Martin specifically asked what the Board's reaction was to his June 23 letter. Sanger said the Board had not finally decided. Martin asked Sanger to see if he could obtain the Board's response to his letter as he expected them to answer promptly. Sanger agreed to do so. (Mason and Sanger to files, June 25, 1986)

* * *

DiCola requested Sanger to grant an extension of time to file his Financial Disclosure Report to August 8, 1986. (DiCola to Sanger, June 25, 1986)

6/27/86 OGE (Ley) told Sanger that Zigrossi had called OGE to tell them that he had met with the Board on the conflict of interest matter, and that the Board was planning to respond to Martin's June 23 letter to Dean. No one at TVA told Sanger of the meeting, decision to respond to the letter, or the call to OGE, although he is the formally designated person responsible for TVA's liaison with OGE.